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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

October 10, 2012

10:04 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

(Doc no. 1242, 945, 61) Status conference RE: Pre-Auction
Objections of the RMBS Trustees to the Debtors' Sale Motion.

(CC: Doc no. 1586, 1587) Motion to Remove Mortgage Loan alleged
by Kenneth Taggart from Assets of GMAC Mortgage, LLC & Motion
to Prove Ownership of Mortgage Assets (Mortgages & Notes)
Kenneth Taggart Dispute Asset(s) of GMAC Mortgage, LLC. filed
by Kenneth Taggart.

(CC: Doc no. 1472) Motion to Convert Case to Chapter 7 Filed by
Paul Papas.

(CC: Doc no. 1427) Debtors' Application Under Section 327(e) of
the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rule
2014-1 for Authorization to Employ and Retain Hudson Cook, LLP
as Special Counsel to the Debtors, Nunc Pro Tunc to May 14,
2012 filed by Gary S. Lee on behalf of Residential Capital,
LLC.

(CC: Doc no. 1426) Debtors' Application for an Order Under Section 327(e) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rule 2014-1 Authorizing the Debtors to Employ and Retain Pepper Hamilton LLP as Special Foreclosure Review Counsel for Bankruptcy Issues to the Debtors, Nunc Pro Tunc to May 14, 2012 filed by Gary S. Lee on behalf of Residential Capital, LLC.

(CC: Docket No. 1585) Amended Motion of Kenneth Taggart for Stay to Order Regarding Limited Relief from Stay Until Order on Motion to Void Pleadings & Sanctions Due to Violation of Bankruptcy Code is Issued by the Court.

(CC: Doc No. 1114) Motion of Kenneth Taggart to Void Pleadings & Sanctions Due to Violation of Bankruptcy Code.

(CC: Doc# 1397) Motion for Stay and Request for Hearing to Order regarding Limited Relief from Stay until Order on Motion to Void Pleadings & Sanctions due to violations of Bankruptcy Code is Issued by the court. (RE: Montgomery Court of Common Pleas-Pennsylvania 2009-35338).

(Doc no. 1431, CC: Doc# 1359) Motion to Allow For a Declaratory Ruling as to Possible Violations of the Automatic Stay and to Sever Defendants Protected by the Automatic Stay.

(CC: Doc# 1416) Debtors Motion Under Bankruptcy Code Sections 105(a) and 362(d) for Entry of an Order Approving Procedures by Which Third Parties May Request and Obtain Stipulated Relief from the Automatic Stay to Commence or Continue Actions to Foreclose Senior Liens.

(CC: Doc# 1357) Debtors Motion for Entry of an Order Under Bankruptcy Code Section 363 and Bankruptcy Rule 6004 (I) Authorizing the Debtors to Compensate PricewaterhouseCoopers, LLP for Foreclosure Review Services in Furtherance of the Debtors Compliance Obligations Under Federal Reserve Board Consent Order and (II) Reaffirming Relief Granting in the GA Servicing Order.

(CC: Doc# 897) Motion for Relief from Stay 3355 Sunhaven Oval, Parma, OH.

A stipulation will be submitted to the Court prior to the hearing.

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(CC: Doc# 1105) Motion for Relief from Stay In regards to property located at 68 Hammock Lane, Staten Island, New York. A stipulation will be submitted to the Court prior to the hearing.

Doc# 1180 Motion for Relief from Stay in regards to property located at 1700 North River Road, West Lafayette, Indiana. A stipulation will be submitted to the Court prior to the hearing.

(CC: Doc# 996) Motion for Relief from Stay in regards to property located at 23904 Lakeside Road, Santa Clarita, CA. A stipulation will be submitted to the Court prior to the hearing.

(CC: Doc# 1438) Motion for Relief from Stay as it relates to 4601 Pocatella Avenue, North Port, FL 34287. A stipulation will be submitted to the Court prior to the hearing.

(CC: Doc# 677) Motion for Relief from Stay -Motion of Deborah Bollinger and Bryan Bubnick for Relief from Automatic Stay as to GMAC Mortgage, LLC and Residential Capital, LLC.

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(CC: Doc no. 1261) Motion for Relief from Stay filed on behalf
of the People of the State of California filed by the Firm of
Biels Cohen.
A stipulation will be submitted to the Court prior to the
hearing.

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RESIDENTIAL CAPITAL, LLC, ET AL.
P R O C E E D I N G S

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THE COURT: All right. Please be seated. We're here
in Residential Capital, number 12-12020.

Mr. Princi?

MR. PRINCI: Good morning, Your Honor. There are --
this is an omnibus hearing, so there are a number of matters
before the Court. We've submitted an agenda. I believe the
first item, Your Honor, is the status report with respect to
the discovery matters concerning the debtors' 9019 motion.

I think Your Honor was sent last night a couple of
things. Number one, Your Honor, we sent the Court a proposed
order which I will update the Court respecting in just a
moment, seeking to adjourn the hearing dates on the motion.
And then I believe, number two, Your Honor, the committee sent
the Court a letter outlining what it believes to be the present
status of certain discovery issues.

THE COURT: Yes, let me -- and I did read them. I
printed them out and I managed to leave them sitting on my
desk. Let me just grab them. Everybody stay seated. I'm
going to come back.

(Pause)

THE COURT: All right, go ahead, Mr. Princi. I have
both letters in front of me.

MR. PRINCI: Okay, Judge. So, Your Honor, let me
first frame for you the background with respect to the order,

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1 tell you where it is. And then I think we can ask the Court to
2 start to address some specific matters, if the Court would
3 entertain us.

4 So the revised order, Your Honor, was occasioned by
5 the need for the debtor to seek to adjourn the hearing dates,
6 because we couldn't comply with the number of depositions we
7 were facing. Your Honor knows the background of that from the
8 last hearing.

9 The parties who had originally submitted the original
10 scheduling order to the Court: the committee, the trustees,
11 and the institutional investors, were people that we then
12 approached to try to work out the details. I will say, Your
13 Honor, the institutional investors were none too happy about
14 this for reasons that you've heard before. We appreciate their
15 cooperation in working with us.

16 I believe with respect to the institutional
17 investors -- and their counsel is here and can correct me if
18 I'm wrong -- that notwithstanding that they would otherwise
19 prefer that this matter have gone forward as presently
20 scheduled, they otherwise find acceptable the particulars
21 contained in the revised order.

22 As for the trustees, Your Honor, they too have been
23 cooperative. I think they're continuing to work apace to come
24 to their own conclusions with respect to the merits of the
25 proposed 8.7 billion dollar settlement. They have identified

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1 some initial concerns. They are going back to reconsider based
2 on some discussions we've had. What we would propose to do,
3 Judge, is to continue to work with them. We think we're going
4 to work those issues out; not ask the Court to enter any order
5 today.

6 THE COURT: When you say issues and they're going to
7 continue to work them out, is that in regard to schedule or --

8 MR. PRINCI: Just a scheduling order, Judge. Just a
9 scheduling order.

10 I will say, Judge, on the good news front, since,
11 again, I did, if you will, lay a challenge at the trustees'
12 feet early on in this case, the trustees are clearly working
13 very diligently to deal with what is before the Court, and that
14 is the merits of the 8.7 billion dollar proposed settlement.
15 So what we'd like to do, Judge, is continue to work with them.
16 We think we're going to be able to resolve the nits and nats in
17 the scheduling order. And then we'd like to come back to the
18 Court by no later by Friday.

19 We'll either be, at that point, proposing on notice to
20 submit to the Court a proposed revised scheduling order that
21 has the consent of the trustees, or to the extent that we have
22 outstanding issues, we will alert the Court in writing as to
23 what those issues are, and then Your Honor can enter an order
24 at that point.

25 With respect to the issues that we have with the

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1 committee, Your Honor, we don't think we can make any further
2 progress. So rather than delay things, I'm going to ask the
3 Court to just make a determination for us with respect to the
4 open issues we have. Time did not allow us to talk to every
5 party that may have an issue concerning this order. But we
6 would welcome parties to raise any issues. If we can work them
7 out between now and Friday, we will. If we believe that some
8 of the -- any issue raised today is not one we're going to be
9 able to negotiate, we'd ask the Court then to resolve it.

10 So what we're hoping to do, Judge, by way of going
11 forward, is leave this courtroom with Your Honor making a
12 determination as to the open issues we have with the committee,
13 any other open issue that any other party should raise, and
14 just leave to us and the trustees working out some of the
15 concerns they've raised. And then by Friday, in writing, we'll
16 submit a proposed order to the Court. That would be how we'd
17 like to proceed, Your Honor.

18 THE COURT: Is there any disagreement with respect to
19 the proposal to move the hearing to the week of January 14th?
20 When I read the correspondence it seemed to me that the issues
21 focused on dates along the way, but -- let me ask the question.
22 Is there disagreement by any of the parties-in-interest with
23 respect to moving the hearing to January 14th, subject to
24 appropriate resolution of the interim dates and obligations?

25 MR. BENTLEY: We are --

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1 THE COURT: Mr. Bentley?

2 MR. BENTLEY: -- we are satisfied with the new hearing
3 date, Your Honor.

4 THE COURT: All right. I know you wanted more than
5 the three days, though, I gather?

6 MR. BENTLEY: That's correct, Your Honor. We don't
7 completely agree with the way our position was characterized,
8 but that is an issue we wanted to raise.

9 THE COURT: Okay. All right.

10 Come on up to the microphone.

11 MR. LEMAY: Your Honor, David LeMay for the examiner.
12 I think all I'd like to do right now is just put a pin in an
13 issue relating to timing of the examination as it relates to
14 this process. And perhaps if I could bother Your Honor for
15 about three minutes when all is done --

16 THE COURT: It's not a bother.

17 MR. LEMAY: -- I'd like to talk to you, at that time.

18 THE COURT: All right.

19 MR. LEMAY: Thank you.

20 THE COURT: Okay; all right.

21 MR. PRINCI: Your Honor, with respect to the specific
22 issues -- and as you correctly point out, that they are issues
23 having to do with how we get from here to there; "there" being
24 the new proposed dates for the hearing of January 14, 15, and
25 16 -- what I'd like to do is address the one matter that Mr.

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1 Bentley raised, and that's the time for the hearing. And then
2 I'm going to ask my partner, Mr. Rains to address the other
3 particular issues, since he was closer to the negotiations that
4 occurred over the last twenty-four hours.

5 Judge, with respect to the amount of time for the
6 hearing, two things. Number one is we heard the Court, or so
7 we understood the Court to be saying that this hearing was
8 going to be three days. The reality is, Judge, this is either
9 a hearing on the 8.7 with the all Iridium factors -- and we
10 understand that one of them is the question of whether the
11 negotiations were arm's-length -- or it's going to be some sort
12 of duplication of the efforts the examiner is doing, and an
13 opportunity for people to try to use this hearing for that
14 purpose.

15 The seventh factor in the Iridium factors, the arm's-
16 length negotiations, in this case, given the facts, doesn't
17 pertain to the negotiations between the two parties, i.e., the
18 ResCap debtors and the counterparties and institutional
19 investors. What people are complaining -- and Your Honor knows
20 this and we know this -- those people are alleging that, in
21 essence, Ally, our parent company, was a puppeteer; we were the
22 puppet; and they used the puppet to promote a settlement with
23 the institutional investors that wasn't meritorious on its
24 face, wasn't designed for that purpose, and was designed
25 instead to procure the consent of the institutional investors

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1 to enter into the plan support agreement which has third-party
2 releases proposed in connection with the plan. So that's --
3 those are the allegations.

4 Those allegations are being reviewed by the examiner.
5 We have a concern, Judge, that there is a disproportionality
6 now, and to a great degree, with respect to that one factor in
7 the Iridium factors. And we say this, Judge, because at the
8 end of the day, it seems to us, and we submit to the Court,
9 that if we were to prove to the Court that 8.7 falls within the
10 range of reasonableness for both parties, and yet let's just
11 hypothesize, Judge, that Your Honor should conclude that the
12 reason we really did that, wasn't because we were interested in
13 the interests of the estate, but we were only interested in
14 trying to get the parent company a release; at the end of the
15 day, we would submit, Your Honor, that the way the Iridium
16 factors work, it would still be appropriate and indeed
17 necessary for the Court to hold that the 8.7 is a fair
18 settlement.

19 THE COURT: I disagree.

20 MR. PRINCI: Okay.

21 THE COURT: The seven Iridium factors, some of which
22 may or may not be applicable in each case, are seven
23 nonexclusive factors; and no one is determinative. So when I
24 say I disagree, your -- the proposition you assert -- have
25 asserted that simply because the amount is within the range of

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1 reasonableness, the Court is required to approve the
2 settlement, I don't read Iridium that way. I don't read TMT
3 Trailer Ferry that way. I don't read the other cases regarding
4 approval of 9019 settlements that way.

5 It is -- that isn't to say that I would conclude it
6 can't be approved. You seem to be arguing that the Court has
7 no alternative at that point, but to approve it. I don't agree
8 with that statement.

9 MR. PRINCI: Understood, Your Honor. I think the way
10 we -- what the debtors would argue, Your Honor, Iridium stands
11 for, is that --

12 THE COURT: Because -- wait a second --

13 MR. PRINCI: Yes.

14 THE COURT: -- Mr. Princi. 8.7 could be a dollar
15 value within the range of reasonableness, but the other
16 settlement terms may be such that the settlement should not be
17 approved. Okay? I don't know whether that's the case. I'm
18 not making any determination. The parties will lay out their
19 positions. But you shouldn't think you're going to come into
20 the hearing and simply -- because you've asserted this position
21 and you can carry forward with it, if you wish. But it's not
22 my understanding of the law.

23 You've been consistent in articulating the view that
24 the only issue for the Court at the settlement hearing is
25 whether the 8.7 billion dollars is above the lowest point in

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1 the range of reasonableness. I will have an open mind at the
2 hearing. But, you know, I can't count the number of times I
3 have applied the Iridium factors in 9019 motions, and I -- if
4 your argument is that the Court must approve a settlement any
5 time it is above the lowest point in the range of
6 reasonableness, that's not my understanding of the law.

7 That is certainly a very, very important factor, maybe
8 the most important factor. We'll have to see. But if the
9 remaining terms of the settlement are such, for example, if
10 the -- any party that objects were to establish that the range
11 of reasonableness was 3 billion to 12 billion, we settled on
12 8.7 billion, probably higher than we otherwise would have,
13 because of the benefits it confers on AFI, that's going to be
14 an argument I'm going to hear and consider.

15 So I don't doubt, it's a very complex matter. But I
16 just -- the reason I take the time to go through this now is,
17 you've been consistent at every hearing when you've opposed
18 discovery about the negotiations that the only thing that
19 matters at this hearing is whether 8.7 billion is in the range
20 of reasonableness. It's not.

21 MR. PRINCI: Judge, I think I've been consistent, but
22 perhaps not clear. We appreciate the fact that that is one of
23 the factors.

24 THE COURT: We'll both agree on that.

25 MR. PRINCI: Judge, we appreciate that it is a factor.

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1 And as much as we would like to avoid what we're going through,
2 we do understand that there is some amount of information
3 that's appropriate in addressing that factor. Our point,
4 Judge, is that this is now -- we now have the minnow eating the
5 whale. We're spending --

6 THE COURT: That's your view of it. I don't have a
7 view of it. But we'll see.

8 MR. PRINCI: Okay. But --

9 THE COURT: The argument that it's the minnow eating
10 the whale is not going to lead me to say you -- that they can't
11 take twelve depositions or that they can't do -- you know, I'm
12 going to give -- within limits, I'm going to give all parties
13 an opportunity to develop and present their case.

14 MR. PRINCI: I understand, Judge. The practical issue
15 the debtor has is that -- and this was always the issue up
16 front when we were -- we always knew that some party needed to
17 do a thorough investigation of the settlement between Ally and
18 the debtor. We originally thought it was going to be the
19 committee. The committee originally proposed to do that. We
20 have the examiner at a cost of approximately forty million
21 dollars, and that's fair and good.

22 But to have another group of parties come in and
23 fundamentally do the same thing under the guise of we need to
24 examine one of the factors referenced by the Second Circuit in
25 connection with 9019 motions, is very problematic. We just

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1 think it's disproportionate. It has led to our need to seek to
2 adjourn the hearing. It is costing millions of dollars. All
3 which Your Honor may say it is what it is. But again, we
4 submit to the Court that we're --

5 THE COURT: It's your motion, Mr. Princi.

6 MR. PRINCI: Understood, Judge.

7 THE COURT: You're seeking relief from the Court, and
8 there are consequences that come from that. You know, you've
9 insisted from the start that this is a central aspect of the
10 debtors' effort to reorganize. I've tried numerous times to
11 accommodate that request: first by scheduling the hearing for
12 November 5th; then moving it to the 13th of November. I made
13 clear from the start, however, that despite the effort of
14 numerous parties to argue that there was just too much to be
15 done, too much discovery, too much this, I'll give them their
16 discovery; I was going to hold those dates. Okay?

17 I do have some questions, because it appears that
18 despite the Court having been quite clear as to what the
19 deadlines for various discovery being completed -- I'm not
20 saying it was any bad faith on anybody's part -- that hasn't
21 occurred at this point. So with -- and you asked at the last
22 hearing about the Court's availability in January, and I told
23 you that the week of January 14th was available.

24 So I'm certainly -- with respect to that portion of
25 the request, yes, the hearing dates -- November 13th, 14th and

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1 16th -- or I don't remember --

2 MR. PRINCI: That's the present.

3 THE COURT: -- will be moved to the week of January
4 14th. We'll talk about how many days that week in a little
5 bit. I'm quite concerned because I've indicated it's going to
6 be a timed trial. This is not a two-party dispute. And I want
7 to be sure that the parties-in-interest have a reasonable
8 amount of time. We'll flesh that out a little bit more as we
9 talk today.

10 MR. PRINCI: Okay. Well, I'll -- Judge, that was all
11 moving towards the hearing dates. So our estimation, Judge, is
12 that three days should more than suffice. I think if Your
13 Honor gave twenty days, we'd feel that twenty days; if you gave
14 ten, we'd feel ten.

15 THE COURT: Well, we're not going to take twenty days.

16 MR. PRINCI: And it goes on and on.

17 THE COURT: How much time do you -- how much time do
18 you anticipate requiring for your case? And when I say for
19 your case, that includes -- you've seen the list of the
20 witnesses that they're deposing, how many experts -- how much
21 time do you anticipate using in cross-examina -- you know,
22 you're going to put in your case-in-chief through declarations
23 and exhibits. And the issue is how much time, as you stand
24 here now, do you anticipate requiring for cross-examination of
25 witnesses that will be -- and perhaps rebuttal witnesses that

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1 you intend to call?

2 MR. PRINCI: So, Judge, I'm working on the assumption
3 that based on the indications we've gotten to date, that
4 there'll be at least three -- actually, there will be -- let's
5 see. The Committee, MBIA, FGIC, Wilmington Trust --

6 THE COURT: I thought they had designated eleven --

7 MR. PRINCI: -- will all be objectors --

8 THE COURT: Okay.

9 MR. PRINCI: -- was my point.

10 THE COURT: I'll assume that for now. Yes.

11 MR. PRINCI: Okay? A question necessarily in length
12 of trial, is now many of those parties are going to have the
13 right to cross-examine, how much duplication --

14 THE COURT: That's why I want to ask right now -- my
15 only question to you right now, Mr. Princi is --

16 MR. PRINCI: Right.

17 THE COURT: -- you know how many -- like I said, at
18 the last hearing there was a discussion about how many experts
19 witnesses did the parties have. And there was some discussion
20 well, they've indicated more than they think they're going to
21 require at the actual hearing. But if we assume that -- have
22 they told you who the experts are, at this point?

23 MR. PRINCI: They've designated ten.

24 THE COURT: All right. So let's assume that ten ex --
25 that they object and they call ten witnesses. How much time do

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1 you expect to require to cross-examine ten expert witnesses?

2 MR. PRINCI: Coupled with the amount of time we would
3 anticipate there would be for cross-examination of our six fact
4 witnesses --

5 THE COURT: No, let's -- I just -- I want to focus
6 just on the experts for a moment. Assuming they call ten
7 expert witnesses, how much time do you request for cross-
8 examination of ten expert witnesses, who you have not yet
9 deposited?

10 MR. PRINCI: Your Honor, without knowing what they're
11 going to testify, I simply cannot inform the Court.

12 THE COURT: So how can you tell me that three days is
13 enough. You won't even tell me how much time you anticipate
14 needing for cross-examination.

15 MR. PRINCI: The way I'm doing it, Judge, is with the
16 expectation -- and I thought this was your -- Your Honor was
17 suggesting this -- that there won't be a need to have
18 duplicative experts, which is what's going to happen if we have
19 all ten.

20 I also indicated before that one of those ten is
21 somebody proposing to do your job, or so we believe. That
22 would be an expert witness who would opine on --

23 THE COURT: Let's assume they call five --

24 MR. PRINCI: -- the propriety of corporate
25 formalities. I beg your pardon?

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1 THE COURT: Let's assume they call five experts. How
2 much time do you anticipate requiring for cross-examination?
3 You will have deposed the witnesses ahead of time. But you're
4 going to have to cross-examine them when they're on the witness
5 stand.

6 MR. PRINCI: You know, going by experience, Judge, I
7 would think we would need probably a day for those witnesses.

8 THE COURT: All right. And with respect to cross-
9 examination of fact witnesses?

10 MR. PRINCI: I'm not -- are you talking about our fact
11 witnesses, Judge?

12 THE COURT: No, you're going to put in your direct
13 ca -- well, unless I change my view about it, which I -- what
14 I'm concerned about is people dump in declarations and say go
15 ahead, I'll call -- I'll put in ten declarations of fact
16 witnesses. Let them use their time to cross-examine. So I'm
17 very mindful of that, okay? But --

18 MR. PRINCI: I'm not aware that they will have any
19 fact witnesses. I wouldn't understand how they could, Judge.

20 THE COURT: Okay. Well, I suspect they may say
21 something different about that. But --

22 MR. PRINCI: Okay. I don't --

23 THE COURT: Let me ask you. Are you prepared to
24 commit now that you'll take no more than one day for presenting
25 your case, which means opening statement, you're putting in

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1 written narrative direct, cross-examination of their fact and
2 expert witnesses, any rebuttal case. Are you agreeing now that
3 you will use no more than one day for that purpose?

4 MR. PRINCI: Your Honor, I believe the answer is yes.
5 But if I may confer with --

6 THE COURT: Go ahead.

7 MR. PRINCI: -- the people working with me? Excuse
8 me.

9 THE COURT: Okay.

10 MR. PRINCI: Yes, Your Honor. The answer is yes.

11 THE COURT: Okay.

12 MR. PRINCI: So, Your Honor, if we put our case on in
13 a day, if we examine five expert witnesses that they present in
14 a day, it seems to us that three days should be enough time.
15 But I will leave it to the Court -- excuse me -- I will leave
16 it to the committee -- obviously the committee doesn't agree
17 with that -- to address the Court and then we can further
18 address the matter if the Court would like.

19 THE COURT: Well, here. So here when I set time --
20 when I do these timed trials, like -- I'm not sure any of my
21 colleagues do them; I do them; district court judges do them --
22 I set the total number of hours that you have. You use it any
23 way you wish: opening statement, here it will be cross-
24 examination, redirect, rebuttal case, closing argument. So
25 when I say how much time -- and I'm asking -- because when I

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1 ask for your commitment, when I set the length of a trial, I'm
2 going to hold you to that. Okay?

3 I'll define it in terms of hours. My law clerks track
4 the number of hours that each side uses. I have to say, when
5 I've -- every case that I've done a timed trial, the parties
6 have finished in less time than they were allocated. And
7 usually before a trial, it's miraculous. They've pared the
8 number of witnesses they expect to call from twenty to four.
9 All right? It does focus the mind.

10 MR. PRINCI: Judge, my --

11 THE COURT: No one at the end of a hearing has ever
12 complained that they didn't have sufficient time to present
13 their case. And every time I've used it, they've actually
14 finished early. And when I haven't done timed trials, they
15 never finish on time. And I always have to carry over. So
16 that's why I do it. So I don't want -- but I want to be fair
17 to everybody.

18 MR. PRINCI: Would you like to hear from the other
19 parties-in-interest?

20 THE COURT: Well, I do in a minute. But I just -- so
21 what we're going to do with the trial is start at 9 a.m. And
22 we generally go to 12:15 with a fifteen minute recess. So you
23 get three hours in the morning. We resume at 2, and in theory,
24 we get three hours in the afternoon. And I'll tell you why in
25 theory. Because I'm not averse -- you know, if you're not

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1 finished with witnesses, we just continue on. I'll go into the
2 evening. That's not an issue.

3 But generally, with recesses and hopefully not too
4 many sidebars, if I don't count it against somebody, it's
5 usually -- they're six-hour trial days. As I say, unless -- I
6 mean, I've had trials that have gone on till 10 o'clock at
7 night, to cut down at the other -- at the back end on the days
8 that have been allocated.

9 But so when you say that you'll present your entire
10 case, opening statement, any cross-examination, any redirect,
11 any rebuttal case, closing argument, you're going to do it in
12 six hours?

13 MR. PRINCI: What I'm doing -- I just want to make
14 sure -- I don't think we had taken into account the rebuttal
15 case, at least not when I answered your earlier question.

16 THE COURT: Yes, I --

17 MR. PRINCI: I thought you meant case-in-chief. I
18 apologize.

19 THE COURT: Look, I'm not -- I want to make clear to
20 you -- okay -- I'm not -- I'm going to ask the same questions
21 of the other parties. Okay. They may have more trouble
22 coordinating their cases, but I'm not giving everybody -- you
23 get six hours. Each of them is not getting six hours. Okay?

24 MR. PRINCI: If I may confirm -- in my sidebar
25 discussion, Judge, I think we were thinking case-in-chief. And

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1 six --

2 THE COURT: No, no, no. I'm talking about -- because
3 you get -- I will allocate the time, the total number of hours.
4 You use it any way you wish. But when the time is up, you're
5 done. That's why I need to know. And if you -- six hours may
6 not be enough for you, Mr. Princi.

7 MR. PRINCI: Understood.

8 THE COURT: And I'm not --

9 MR. PRINCI: No, no, no. You're not -- and I realize
10 that you're not insisting that we finish, you're literally just
11 asking -- if I may confer with my colleagues, Your Honor?

12 THE COURT: Go ahead. Please do.

13 MR. PRINCI: Thank you.

14 Judge, I think we would need a day and a half.

15 THE COURT: Okay. Nine hours.

16 MR. PRINCI: Yes, Your Honor.

17 THE COURT: Okay. I'll let you come back up. But let
18 me hear from the other principal combatants or likely
19 combatants. Mr. Bentley.

20 MR. BENTLEY: I have a question before I take the
21 podium, Your Honor. Does it makes sense to hear first from
22 Ally and Ms. Patrick? Because I would think that they will be
23 questioning along with the debtor. And that changes the
24 timing.

25 THE COURT: Perhaps it does. Does Ally or -- who's

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1 speaking for Ally.

2 MR. BRYAN: Good morning, Your Honor. Patrick Bryan
3 for Ally Financial.

4 THE COURT: Right.

5 MR. BRYAN: Your Honor, we don't -- obviously, this is
6 the debtors' motion. However, we would like to reserve time,
7 to the extent that --

8 THE COURT: How much time do you wish to reserve?

9 MR. BENTLEY: Three hours, Your Honor.

10 THE COURT: All right, Ms. Patrick? Just so everybody
11 understands the ground rules; when I allocate the time -- and
12 I'm not saying you're going to get your three hours -- we'll
13 talk about it at the end -- use it any way you want, but when
14 you've used it, it's over.

15 Okay, Ms. Patrick?

16 MS. PATRICK: Your Honor, I think that we can probably
17 live with three hours. I had actually thought that we would be
18 counted in the debtors' nine, so I'm happy to have three.

19 THE COURT: Well, you may be. I'm not saying -- okay.
20 Ms. Patrick, I'm not saying I'm agreeing to this. I want to
21 get the bid on the table and then --

22 MS. PATRICK: And let me articulate for you why we
23 would --

24 THE COURT: Go ahead.

25 MS. PATRICK: -- why we would be, in our view,

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1 entitled. It's the same reason that we filed a brief. There
2 are issues in the order relating to fairness to the trusts that
3 are uniquely of concern to our clients and the trustees in
4 terms of the authority to enter into this settlement; what's in
5 the best interests of the trusts, which is not typically part
6 of the debtors' 9019 burden. So it's in general, for that
7 purpose that we would ask for time.

8 THE COURT: Okay. Mr. Siegel?

9 MR. SIEGEL: Your Honor, while we don't know if we're
10 even going to speak, we think if we do, we'll need three hours.

11 THE COURT: Are you calling any witnesses? You don't
12 know yet. But what -- tell me what you can tell me, Mr.
13 Siegel. Are you going to call --

14 MR. SIEGEL: Well, I'm --

15 THE COURT: -- do you anticipate calling witnesses?

16 MR. SIEGEL: No. The problem that we have, the
17 difficulty we have is if we think we are leaning toward --
18 well, if we're objecting to the settlement, we're in one place.
19 Our objection would be more in the nature of don't do this,
20 we're going to say no. Think of it that way. If we are --

21 THE COURT: You'd rather be an innocent bystander and
22 let others fight it out?

23 MR. SIEGEL: Well, I mean, this is a very strange
24 motion, as you know.

25 THE COURT: It is.

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1 MR. SIEGEL: I mean, it's a motion to make an offer to
2 us, which we're not bound to accept.

3 THE COURT: Yes, I mean, if I approve the motion, I'm
4 not sure what it accomplishes.

5 MR. SIEGEL: Right, well, that's why. If we think, at
6 that point, that it's a fruitless act, we will tell you. We
7 don't think that now. But if we think that, we will tell you.

8 On the other hand, if we think that we're going --

9 THE COURT: I won't hold it against you, personally,
10 if you tell me that it's a fruitless act. Because maybe we can
11 save everybody a lot of time and money.

12 MR. SIEGEL: Understood. On --

13 THE COURT: So if and when you get to that point --

14 MR. SIEGEL: Yes. On the other hand, if we are
15 supporting the motion, or we think that we're in that position
16 and we receive replies from certificate holders, objections
17 from certificate holders, since we cannot anticipate what they
18 will say, we may need some time to respond to that, both in the
19 form of papers, which is reflected in the scheduling order, and
20 then at the hearing-in-chief. Again, we don't know, because
21 there are things that have not yet happened that we need to
22 address.

23 THE COURT: Okay, Mr. Siegel. Thank you.

24 MR. SIEGEL: Thank you.

25 THE COURT: Mr. Bentley?

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1 MR. BENTLEY: I'm prepared to give you our best
2 estimate today, Your Honor. I would make one caveat at the
3 outset, and that is, with respect to fact witnesses in
4 particular, and also expert witnesses to some degree, we will
5 certainly have a clearer sense after we've taken depositions.

6 But with that caveat, which I'm sure the Court
7 understands, let me break our case into a few pieces. We'll be
8 cross-examining the debtors' three experts. We'll be cross-
9 examining the debtors' six fact witnesses. And we'll be
10 putting on fact witnesses of our own, at --

11 THE COURT: Well, when you say cross-examining the
12 debtors' six fact witnesses, has the debtor indicated it's
13 going to call -- it's putting in declarations from six fact
14 witnesses?

15 MR. BENTLEY: Well, Mr. Princi said at the last
16 hearing, I guess last week -- we're losing track of time
17 here -- that his current estimation, while he can't say for
18 sure, because it's early --

19 THE COURT: All right.

20 MR. BENTLEY: -- is that he'll put on six fact
21 witnesses.

22 THE COURT: Okay.

23 MR. BENTLEY: So we're cross-examining those. And
24 then finally, we're going to have at least one fact witness of
25 our own, maybe -- I can't speak for other objectors. The

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1 committee's current expectation is we'll have at least one
2 adverse fact witness that we'll put on.

3 So to take those in turn --

4 THE COURT: It sounds like you've made the
5 determination you're opposing?

6 MR. BENTLEY: Actually, Your Honor, I'm glad you
7 raised that point, because let me say to the Court what I've
8 said to the other side many times. All of these discussions --
9 we have not yet made that decision. And in fact, we're meeting
10 with Ms. Patrick and her partner Bob Madden this Friday to have
11 a face-to-face sit-down about the merits.

12 Our experts are -- the debtors don't believe us when
13 we say this -- our experts are not anywhere near done.

14 THE COURT: Okay. Go ahead. I'll --

15 MR. BENTLEY: So we have not reached a decision. But
16 I would say, Your Honor, for purposes of discussion of this --

17 THE COURT: And you have what, three experts?

18 MR. BENTLEY: -- we have to assume that we'll be
19 opposing. We have three experts. It may be less, Your Honor.
20 That's still up in the air.

21 THE COURT: But you'll put in written testimony. But
22 I expect you'll have redirect examination that you'll want of
23 your own witnesses?

24 MR. BENTLEY: Yes, Your Honor. And that will probably
25 be significant, because we think Your Honor will want to hear

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1 from our experts directly, live.

2 As to our cr -- and I guess the debtors have said -- I
3 think what we've heard in terms of the amount of time the
4 debtors plus Ally plus Ms. Patrick, plus potentially the --

5 THE COURT: Simplify it for me. How many hours are
6 you asking for?

7 MR. BENTLEY: If they're going to be cross-examining
8 them for more than day, which it sounds like, I think we --

9 THE COURT: This is really not a trick question.
10 Okay?

11 MR. BENTLEY: I'm trying to think it through, Your
12 Honor, because we frankly didn't come to court prepared to lay
13 this all out in detail. So I'm doing my best, and excuse me.
14 I'll move as fast as I can. It will take --

15 THE COURT: Let me -- I'm going to interrupt you for
16 this purpose. You're correct that I didn't alert you all that
17 I was going to ask these questions. When I saw the letter last
18 night about moving the dates and the difference in view about
19 the length, that decided me I was going to raise this
20 specifically. So what we're going to do -- I do want to press
21 everybody what they -- as they stand here now, what they
22 believe they expect to use. But I'm going to direct you all to
23 meet and confer and see if you can come to a firmer agreement
24 where you're all sort of locking yourself in as to those hours.

25 So I'm going to give -- you'll get a slight second

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1 bite at this. Okay? And when I slight, I mean, I don't --
2 don't tell me now you want six hours and then you come back and
3 tell me twenty-four hours. It isn't going to happen. Okay?
4 But what you -- this works best -- when I say "this",
5 establishing the time limits works best when the parties have
6 conferred and tried to reach an agreement on the time. Okay?

7 And that's generally what I've successfully done in
8 the past. And if I cut people's time down, it's generally
9 pretty evenly. Everybody's going to feel the same cuts,
10 because I just think what's excessive.

11 But go on now and tell me what -- as you stand there
12 now, recognizing you will get a slight second bite at this
13 apple, how much time do you anticipate requiring?

14 MR. BENTLEY: Certainly, Your Honor. With respect to
15 direct of our experts -- and I'm speaking now of the
16 committee's experts. I can't speak for the objectors.

17 THE COURT: I understand.

18 MR. BENTLEY: It depends on the amount of time that
19 they're crossed. But depending on the length of time they're
20 crossed, it could be up to a day of redirect. If we're putting
21 on three experts and if they're crossing --

22 THE COURT: Six hours, one days, you're talking about?

23 MR. BENTLEY: Yes, Your Honor.

24 THE COURT: All right. And what is your estimate on
25 cross-examination of six fact witnesses tendered by the debtor

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1 and one adverse fact witness that you expect to call?

2 MR. BENTLEY: And before I turn to that, could I turn
3 first, Your Honor, to our cross of their experts, just to take
4 it in --

5 THE COURT: Sure.

6 MR. BENTLEY: -- in sequence? Your Honor, we think
7 it's realistic that it may take as long as two days for --
8 and --

9 THE COURT: No. It's not.

10 MR. BENTLEY: And the other --

11 THE COURT: I'm telling you right now, it's not.

12 MR. BENTLEY: Okay.

13 THE COURT: It's not. Mr. Bentley --

14 MR. BENTLEY: We will do our very best to --

15 THE COURT: No.

16 MR. BENTLEY: -- bring that --

17 THE COURT: Just let me -- let me finish. You know,
18 in my view, the best cross-examinations of expert witnesses are
19 targeted, to the point, and usually don't take more than two
20 hours or so. Okay? Three hours at the most. I'm really quite
21 serious about it. I mean, there is the point of diminishing
22 returns. If you know that you've got to do this examination
23 because you need your time for your other parts of your case,
24 and you've got to cross-examine three experts --

25 MR. BENTLEY: If it were --

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1 THE COURT: -- you're going to lose my attention
2 pretty quickly.

3 MR. BENTLEY: Understood, Your Honor. And we very
4 much agree with Your Honor's point that it should be quick and
5 targeted. We are talking three experts. Two hours each would
6 be six hours. And then we have all the other objectors who may
7 wish to cross as well.

8 THE COURT: Well, we're going to talk about -- I'm not
9 going to permit duplicative cross-examination of experts. I'm
10 just not. You're going to need -- assuming, as it sounds, that
11 you're going to object, you're going to have to coordinate with
12 the other objectors. Generally, what works best is when you
13 and other counsel agree who will take the primary lead on a
14 particular expert.

15 You know that ahead of time, so everybody's prepared.
16 You use time. There may be some additional points particular
17 to another party, that for example, the committee wouldn't
18 bring out, or vice versa. And that's appropriate for further
19 cross-examination.

20 What is not going to happen, and everybody needs to
21 understand that, because you think your forensic skills are
22 better than the person who came before, and therefore you're
23 going to cover the same subject, it is not going to happen.
24 All right? I will cut it off. I will give counsel a fair
25 opportunity to cross-examine the debtors' experts, but it will

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1 be nonduplicative, and therefore you need to coordinate ahead
2 of time.

3 MR. BENTLEY: We understand that, Your Honor. And we
4 do intend to work very hard to make sure that happens. We
5 believe the most effective approach is exactly as Your Honor
6 said, and we're going to try our darndest to present it to the
7 Court that way.

8 THE COURT: How -- you have three experts.

9 MR. BENTLEY: Correct, Your Honor.

10 THE COURT: You're saying you think you need six hours
11 for redirect? You're putting their direct in through written
12 narrative form; I assume there'll be exhibits. And you think
13 you're going to need two hours of redirect with each expert?

14 MR. BENTLEY: We just heard that the cross of them may
15 be a day and a half, two days. It's very hard to -- I would
16 prefer to keep it as short as possible. It's very hard to lock
17 in to a much shorter time, if they're going to be cross-
18 examined for two days.

19 THE COURT: Tell me what your total ask is, then, for
20 fact and -- I mean, for your entire trial time -- entire trial
21 time. All trial phases: openings, cross, redirect, closing.
22 Go ahead.

23 MR. BENTLEY: Your Honor, give me one moment, please?

24 THE COURT: Yes.

25 MR. BENTLEY: I'm breaking it into pieces with Mr.

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1 Kaufman. There are six fact witnesses. We think we can limit
2 our cross to an average of between one and two hours per
3 witness. That gets you to between one and two days for the
4 cross of the fact witnesses. And then we have at least one
5 expert -- sorry, one fact witness of our own. And that would
6 be -- that would be, we estimate, two hours, Your Honor.

7 THE COURT: And you think you need how much time to
8 cross-examine their six fact witnesses?

9 MR. BENTLEY: We think we need an average of between
10 one and two hours per witness. So that's a total of six to
11 twelve hours, Your Honor.

12 THE COURT: Okay. When I say okay, I'm not agreeing
13 that that's appropriate.

14 MR. BENTLEY: Understood.

15 THE COURT: That's your ask.

16 MR. BENTLEY: By my rough math, Your Honor -- and I
17 apologize if I got this wrong -- but I think that adds up to
18 between five and six days total.

19 THE COURT: You didn't add in your opening statement
20 and closing argument and --

21 MR. BENTLEY: Correct. Does Your Honor anticipate --

22 THE COURT: I anticipate when I tell you -- let me
23 make this clear, okay? If I say you have ten hours, you have
24 ten hours for every -- in the aggregate for all trial phases.
25 We will keep track of the time. The more time you spend in

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1 opening and closing the less time you have for witness
2 examinations. You will get one number. You can check back at
3 the lunch break and at the end of each day as to how much time
4 you've used and how much time you have left. Okay?

5 MR. BENTLEY: We --

6 THE COURT: But that will be it.

7 MR. BENTLEY: Understood, Your Honor. In terms of the
8 length of opening and the length of closing, we do think it
9 might be productive for us to confer with the other parties,
10 because frankly, if each party is giving roughly the same
11 amount of time to their opening or closing, that may be helpful
12 to the Court.

13 Does Your Honor -- some courts prefer not to have --

14 THE COURT: I am going to read the briefs ahead of
15 time, you know.

16 MR. BENTLEY: We're not sure we need an opening. We
17 don't know if Your Honor prefers --

18 THE COURT: I know. You probably don't.

19 MR. BENTLEY: Okay.

20 THE COURT: But I don't deny you the right if you want
21 it. You just use your time for it. I will read the briefs
22 before.

23 MR. BENTLEY: We think an hour is a reasonable amount
24 of time for us to close.

25 THE COURT: Okay. Who else wants to be heard?

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1 MR. WYNNE: Good morning, Your Honor. Richard Wynne
2 on behalf of FGIC. Your Honor, to deal with the schedule issue
3 first, and then there's one issue I'd like to circle back to.
4 I think that we would like to ask for six hours on the
5 presumption that we're going to be pretty highly organized, but
6 right now, if I assume that the committee would be objecting,
7 we would anticipate, Your Honor -- behind the scenes, Your
8 Honor, we have tried to be highly coordinated in terms of
9 agreeing to have document discovery, for the committee taking
10 the lead, and we would have sort of one person or one party
11 have primary responsibility for each witness, so that we're not
12 having the sort of duplication Your Honor's talking about.

13 THE COURT: Do you have experts?

14 MR. WYNNE: We have two potential experts, Your Honor.
15 And when I say that we're talking about six hours, if it
16 goes -- if there are three or four parties objecting, I would
17 anticipate that we would probably use or need less, or we would
18 be sharing time. It just really depends upon how much
19 additional work we would need to do. So I think that's
20 probably a high estimate, is my guess.

21 THE COURT: All right. Who else wants to be heard?

22 MR. HOFF: Jonathan Hoff; Cadwalader, Wickersham &
23 Taft, for MBIA. I basically would have the same statement that
24 Mr. Wynne had. We're -- as he's indicated, for the discovery
25 going forward, and in handling the case, we've been doing the

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1 best we can to coordinate, largely letting the committee take
2 the lead and then we would be filling in. We don't know what
3 the dynamics are going to be, but it would be the same
4 circumstances and the same estimate.

5 THE COURT: I mean, I'm telling you right now, if you
6 stand up and go to cross-examine a witness on a subject that
7 they've already been -- that's been covered already, I'm going
8 to shut it down. Do you understand that?

9 MR. HOFF: I appreciate that -- I appreciate that,
10 Your Honor. And you know --

11 THE COURT: So how many hours are you asking for?

12 MR. HOFF: I would say five to six. But that's
13 probably on the high end, depending on -- and assuming that the
14 committee's objecting and taking -- and that we divided up
15 who's taking the leads, and that we either take the lead in our
16 area or we supplement where we're not.

17 THE COURT: All right. Who else wants to be heard?

18 MR. LIGHTNER: Good morning, Your Honor. Mark
19 Lightner from Cleary Gottlieb on behalf of Wilmington Trust.

20 We have been coordinating with the committee and other
21 parties to cooperate. We don't anticipate taking a lead on
22 many of the issues, but there are certain issues related to
23 Residential Capital, just the holdco specifically, so we would
24 ask between two or three hours total.

25 THE COURT: I'm sorry, say that again?

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1 MR. LIGHTNER: Two and three. Thank you.

2 THE COURT: Thank you. Anybody else want to be heard?

3 (Pause)

4 THE COURT: Counsel for FGIC and MBIA, how do your
5 interests differ -- assuming the creditors' committee opposes,
6 how do your interests differ from those of the committee?

7 MR. WYNNE: Your Honor, I wouldn't think that they
8 would.

9 THE COURT: You have to identify yourself first.

10 MR. WYNNE: Excuse me, Your Honor. Richard Wynne for
11 FGIC. Your Honor, I don't believe that they would. And it
12 would really be -- we would use far less time, unless we had --
13 but I'm assuming, if we had principal responsibility for a
14 witness, that would kind of come out of the committee's time if
15 we took a witness.

16 THE COURT: Mr. Hoff, how do your interests differ?
17 I'm not encouraging the committee to oppose, but I --

18 MR. HOFF: Well, it's hard to say in the abstract
19 because the committee hasn't reached any conclusions yet, but
20 we --

21 THE COURT: I asked you to assume.

22 MR. HOFF: Well, we may be looking at issues among --
23 we look at each of the individual trusts. Basically, MBIA
24 insured eight of these securitizations by -- I believe it's
25 eight. And we look at each of the other trusts as separate

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1 creditors and that this is not simply a monolithic group of
2 entities. And we may have issues, for example, as to how the
3 MBIA insured trusts are treated under the settlement, and the
4 rulings you're being asked to make on the other trusts as
5 compared to our trusts.

6 THE COURT: And what evidence do you plan to offer to
7 deal with your specific trusts?

8 MR. HOFF: Well, we are looking at -- there's an 8.7
9 billion dollar total number, and then there is kind of a vague
10 mechanism for allocating the allowed claims among the trusts.
11 So we are looking at how the MBIA insured trusts fare in the
12 settlement vis-a-vis the other trusts, and may have something
13 to say about that. There may be other issues. I assume that,
14 for example, the issues about process are probably common, but
15 when it gets to how that number got allocated -- to determine
16 how the 8.7 got determined and how it got allocated, we may
17 have something to say something about that.

18 And as we're going through discovery, of course, and
19 our experts and we are analyzing the settlement and what we're
20 seeing in discovery -- and the experts -- there may be other
21 issues that arise as well.

22 THE COURT: Mr. Princi, does approval of the
23 settlement necessarily resolve the issue of allocation among
24 trusts?

25 MR. PRINCI: There is an allocation formula that has

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1 been consistent throughout the iterations; that is in the
2 settlement agreement, Your Honor.

3 THE COURT: Okay. Mr. Wynne?

4 MR. WYNNE: Once again, Your Honor, Richard Wynne. I
5 did want to just add a footnote. I was focusing on sort of the
6 central 8.7 issue, but I actually think that the sort of
7 separate issues -- we'll obviously try to brief with respect to
8 those, and it may be more legal argument and closing argument
9 on those issues. I don't anticipate that -- on our separate
10 issues dealing with our specific trusts and our specific
11 agreements, those we'd put in in terms of a brief to Your
12 Honor, and there might be some closing issues. I don't
13 anticipate that much time would be needed with any witnesses on
14 those issues, at this point.

15 THE COURT: Yes, Mr. Kaufman, go ahead.

16 MR. KAUFMAN: Philip Kaufman, Kramer Levin. Your
17 Honor, I'd just like to amend what Mr. Bentley told the Court
18 regarding the committee's time with cross-examination of fact
19 witnesses, since I expect to be the one responsible for that.
20 I would estimate, for six fact witnesses, we're talking roughly
21 an hour to an hour and a half apiece; somewhere in the
22 neighborhood of six to eight hours, I think, is fair. There
23 may be a couple of them that I can do in fifteen minutes, but I
24 suspect that a couple of them, looking at the names that they
25 have given to us, depending upon what we develop in discovery,

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1 could take in excess of an hour, possibly two.

2 THE COURT: Thank you.

3 (Pause)

4 THE COURT: Mr. Princi, remind me, under this proposed
5 schedule, what's the cutoff for fact discovery and for expert
6 discovery?

7 MR. PRINCI: Your Honor, may I have my partner,
8 Mr. Rains, address the Court?

9 THE COURT: Yes, absolutely.

10 MR. PRINCI: Thank you, Judge.

11 MR. RAINS: Good morning, Your Honor. Darryl Rains of
12 Morrison & Foerster, for the debtors. If I could just give you
13 a quick overview of the proposed schedule, I think that would
14 help. So we've broken it into four or five blocks. The cutoff
15 for completing document production would be October 29; that's
16 to allow us to do the new searches and date ranges that the
17 creditors' committee asked us to do.

18 THE COURT: And I know the committee differs whether
19 it's the 29th or, what, the 21st, but just my question -- I do
20 want to get to the details of the schedule. Right now, what's
21 the cutoff of fact discovery, and what's the cutoff of expert
22 discovery?

23 MR. RAINS: So those dates are: the 29th for
24 documents; for fact witnesses, November 16; depositions of the
25 debtors' three experts, we are proposing November 21.

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1 THE COURT: I really -- right now, I just want to know
2 the two dates: when fact discovery is over, and when all
3 expert discovery is over.

4 MR. RAINS: Fair enough. We broke it into multiple
5 dates, but the end of fact discovery would be November 16.

6 THE COURT: Okay.

7 MR. RAINS: And the end of all the expert depositions
8 is, I believe, December 14th.

9 THE COURT: Okay. Let me ask, is there disagreement
10 about those two dates? There's some disagreement about dates
11 before those two final discovery dates. Are there
12 disagreements about the November 16th and December 14th dates?

13 MR. RAINS: No, there are not, Your Honor.

14 MR. BENTLEY: There are not.

15 THE COURT: Mr. Bentley, okay.

16 (Pause)

17 THE COURT: All right, here's what I'm thinking,
18 Mr. Rains.

19 MR. RAINS: Great.

20 THE COURT: I'm going to make a tentative allocation
21 of time as divided between the parties supporting the RMBS
22 settlement and the parties opposing the RMBS settlement. And I
23 understand we don't know where some parties-in-interest --
24 which side of that line people are going to fall. Okay, and
25 when I say "tentative", I'll tell you when I'll revisit the

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1 issue. I'm tentatively allocating twelve hours for parties
2 supporting the RMBS settlement, so that includes the debtors,
3 Ally, and the institutional investors. For the parties
4 opposing the settlement -- there's, I think, less clarity about
5 who they are -- I'm tentatively allocating a total of eighteen
6 hours. So that's a total of thirty hours. We're going to
7 revisit, on what I expect to be a final basis, the allocation
8 of time -- there appears to be one ResCap matter on the
9 calendar for Thursday, December 20th; I don't know what -- that
10 doesn't seem to be an omnibus day, but I don't know what that
11 is. It's described as a motion for clarification regarding
12 relief from automatic stay.

13 UNIDENTIFIED SPEAKER: It's listed as an omnibus day.

14 THE COURT: It is an omnibus day? Okay. So we're
15 going to revisit on a final basis the time allocation on
16 December 20th. People are going to have to be pretty
17 persuasive to adjust the time, the twelve hours and eighteen
18 hours.

19 The trial day, I said what it would be -- I said
20 before what it would be; I'm adjusting it, so everybody listen
21 carefully. We will start at 9. We will go till approximately
22 12:15; with a fifteen-minute recess, is three hours; and
23 depending on whether somebody's finishing a witness, et cetera,
24 generally speaking, three hours. 2 to 5:15, with a fifteen-
25 minute recess, is three hours. And then 5:30 to 8:45 p.m.,

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1 another three hours, with a fifteen-minute recess. So there
2 will be nine-hour trial days. And we will go Monday, Tuesday,
3 Wednesday -- that takes us through twenty-seven hours -- and
4 then Thursday, which is January 17th to conclude. What I would
5 anticipate is, is that everybody would finish their witnesses
6 by the end of the night Wednesday and they'd have closing on
7 Thursday, so you'd have time to sort of reflect on your views.
8 When we get closer to the trial, I may be asking for proposed
9 find -- I expect I will be asking for proposed findings of fact
10 and conclusions of law. Given the magnitude -- the size of the
11 matter, counsel should arrange for daily transcript; you're
12 going to have to do that.

13 I will tell you now that the hearing is not going
14 beyond Thursday the 17th. I've sort of left three hours.
15 There may be a little flex after I hear you in December, but no
16 one -- Mr. Princi was, I think, it may be easier for the moving
17 parties to estimate their time. Well, I understand; witnesses
18 can change and stuff like that. But he was pretty clear. And
19 I'm cutting down on the moving parties altogether. Ms. Patrick
20 had said that she had assumed initially that she was going to
21 get stuck within his time limits, but -- so I've given a little
22 bit of a cushion on the moving parties' side.

23 I think that the amount of time that the objectors or
24 potential objectors have requested is unreasonable, would
25 result in too much duplication, which I've made clear I will

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1 not abide. But the depositions haven't taken place yet; and I
2 understand that, once they've occurred, it may be that the time
3 allocation ought to be reduced, okay, that the twelve and
4 eighteen hours should be less. But until the discovery is
5 done, I don't want to impose a final limit. But I want
6 everybody to go into discovery recognizing what you're likely
7 to have in terms of time limits at a hearing. So it will be --
8 the calendar for December 20th should reflect a further status
9 conference with respect to this.

10 I think I've told you before, I will be away from
11 November 30th to December 16th, so this is right after --
12 shortly after I come back. But everybody should work with
13 those dates in mind, okay?

14 Now, let's --

15 MR. RAINS: Your Honor, one point of clarification.

16 THE COURT: Go ahead, Mr. Rains.

17 MR. RAINS: So when the clock is running, it will run
18 for the proponents and for the objectors and it's up to those
19 parties to work out among themselves how they allocate the
20 time?

21 THE COURT: It is. It is.

22 MR. RAINS: Fantastic.

23 THE COURT: And there are potentially more objectors
24 than there are proponents, but that's -- on the proponents'
25 side as well, I expect that you'll coordinate. And it may be

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1 that Ms. Patrick or one of her colleagues are going to take the
2 lead on some witnesses, or whatever; but in a well-prepared
3 trial, there shouldn't be duplication. I understand that there
4 may be somewhat different interests reflected on the objectors'
5 side, that MBIA may have particular issues about certain
6 securitization trusts and how the allocation would affect them,
7 and others may have other issues. So I recognize that.

8 So those are the tentative allocations, and I said
9 when we'll revisit it, okay? But now there's some issues about
10 some of these intermediate dates in the proposed schedule.

11 MR. RAINS: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. RAINS: Darryl Rains again. If --

14 THE COURT: Go ahead, Mr. Rains.

15 MR. RAINS: -- I could address those.

16 THE COURT: Mr. Princi seems to want to --

17 MR. RAINS: Oh.

18 THE COURT: -- say something.

19 MR. RAINS: Yeah.

20 MR. PRINCI: Your Honor, just one clarification. I
21 think, in the committee's proposed time, I think I heard
22 Mr. Bentley say that they were also including time for a fact
23 witness. The order, Your Honor -- the scheduling order
24 required the committee to designate their fact witnesses by
25 October 5th. We had not received any designation of fact

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1 witnesses from the committee. One of the -- I mentioned to you
2 (a) I didn't understand their general proposition how they
3 would have a fact witness, but (b) we were never informed of
4 any consistent with the scheduling order.

5 MR. BENTLEY: There's a simple answer for that, Your
6 Honor. Should I move to the podium or shall I --

7 THE COURT: Just pull the microphone a little closer
8 to you, Mr. Bentley. Go ahead.

9 MR. BENTLEY: There's a simple answer. The scheduling
10 order expressly carves out adverse witnesses who do not need to
11 be designated. And the witness we're speaking of is an adverse
12 witness.

13 THE COURT: Go ahead, Mr. Rains.

14 MR. RAINS: Thank you, Your Honor. Let me first say
15 that I am pleased to say that we have worked out most of the
16 issues with the creditors' committee, so it took a lot of work
17 to get where we're at, and I thank them for their cooperation.

18 The first disputed issue we have is a date that we set
19 as October 29; it's paragraph 2 of the proposed scheduling
20 order. As you'll recall, at the hearing last week the
21 creditors' committee, for the first time, told us they were
22 unhappy with the search terms we used and the date ranges.
23 They gave us new proposed date ranges and search terms.

24 THE COURT: I'm willing to bet that I'm going to hear
25 that it wasn't the first time they raised the issue with you.

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1 So I'm not sure that that's -- they raised the issue, okay?

2 MR. RAINS: Fair enough. We did get their new search
3 terms, for the first time, the day after the hearing. We met
4 and conferred over the weekend. We are happy to report we've
5 reached agreement on date ranges and search terms, but --

6 THE COURT: And you think you need a little more time
7 to --

8 MR. RAINS: Well, because the date range has changed,
9 it involves going back, pulling electronic data, getting it off
10 of backup tapes, uploading it. There's just a lot to be done.
11 And we explained to them if they want us to do that, it will
12 take us to the 29th. So that's what we've agreed to. They now
13 want to cut that time short; we simply can't do it.

14 THE COURT: Okay, Mr. Bentley, do you want to be
15 heard? Or Mr. Kaufman? Who's dealing with that?

16 MR. KAUFMAN: I won't tell the Court what the Court
17 already knows. This isn't the first time. But be that as it
18 may, Your Honor, we know that when the original scheduling
19 order was set back in July, all the parties, including the
20 debtors, were prepared to produce documents on a ten-day
21 turnaround. What we're proposing with respect to documents
22 that in our view we should have gotten a month ago, we're
23 asking for a twenty-one day turnaround; we think that's more
24 than reasonable. Why suddenly with respect to extending date
25 ranges and doing a somewhat different --

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1 THE COURT: Because I don't want to hear that --

2 MR. KAUFMAN: Okay.

3 THE COURT: -- they couldn't get it done in the few
4 days and --

5 MR. KAUFMAN: Okay.

6 THE COURT: Okay? Just --

7 MR. KAUFMAN: Your Honor, we think a twenty-one day
8 time from today --

9 THE COURT: This is a real Solomononic decision.

10 MR. KAUFMAN: -- for --

11 THE COURT: 5 p.m. on October 26. That's the date.

12 MR. KAUFMAN: Thank you, Your Honor.

13 MR. RAINS: Thank you, Your Honor. We need another
14 Solomononic decision.

15 THE COURT: This is real scientific to be able to --

16 MR. RAINS: We have a deadline, which you've heard,
17 which is the experts have to be finished being deposed by
18 December 14th.

19 THE COURT: Right.

20 MR. RAINS: We have allowed ourselves ten days to
21 write all of our replies to their objections and submit all of
22 our reply expert declarations. We gave ourselves to December
23 24; they want December 21. In the discussions just prior to
24 the hearing, it looks like we might be able to agree on
25 December 23. So that leaves us our trunk and our arms but cuts

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1 off our legs, but that's better than the 21st.

2 THE COURT: Your associates are going to kill you if
3 you're expecting that Christmas Eve you're going to be
4 requiring --

5 MR. RAINS: The smart ones have left already, Judge.

6 UNIDENTIFIED SPEAKER: I'll take an associate if you
7 have one.

8 MR. RAINS: It should be clear, of course. All of our
9 pre-trial submissions are due on January 7, so we're leaving --
10 both sides leaving two weeks during the holidays to get those
11 done.

12 THE COURT: Well, look, the reason I gave you January
13 14th rather than January 7th is I didn't want to completely
14 screw up people's New Years, okay? And -- because I do -- but
15 I need the stuff a week ahead of time; so that's the January
16 7th. You're all subjecting yourself to a very difficult
17 schedule. Be that as it may --

18 MR. RAINS: Judge, we're happy with the 23rd.

19 THE COURT: Okay. Any other issues?

20 MR. RAINS: One very small one; this is paragraph 11,
21 excuse me. There's a phrase in paragraph 11 that allows
22 supplemental declarations of experts. Now, the genesis of
23 that, quite quickly, is we have a regular schedule which has
24 our expert declarations, which have already been done and
25 exchanged. We get their opposition experts' reports on the

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1 28th. And then we have a time to reply; that's now December
2 23. But several of the objectors have said their experts will
3 continue to be working even after the reports are done; they
4 want an opportunity to supplement their reports. And while I'm
5 not sure that's appropriate, we've agreed to that. A new
6 proposal from the creditors' committee just last night is that
7 only they would be allowed to supplement. We want the right to
8 supplement as well, as our experts will continue working as
9 well.

10 THE COURT: Mr. Bentley?

11 MR. BENTLEY: I won't quibble over the timing of when
12 this came up. The issue, Your Honor, is whether the debtors
13 should get three rounds of expert reports or not, with their
14 third round of expert reports coming just seven days before the
15 trial begins.

16 THE COURT: So let me ask you this, Mr. Bentley: If
17 you get the last word with the supplemental report and they
18 call their experts at trial and they indicate that they wish to
19 examine their experts to respond to whatever was in your
20 supplemental expert declarations, I will listen to it. Now, do
21 you think you're better off getting it in writing in advance of
22 the hearing, or waiting to be surprised when they examine their
23 witness at trial? Tell me which you prefer. Usually people
24 would rather see it in advance and not be surprised at trial.

25 MR. BENTLEY: I think we're content to see it in

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1 advance.

2 THE COURT: I thought so too.

3 MR. RAINS: Thank you, Your Honor. Then the way we'll
4 proceed is as Mr. Princi described. There are still parties --

5 THE COURT: Okay.

6 MR. RAINS: -- such as the trustees, giving us
7 comments. We'll try to get a final order, approved as to form
8 by everyone, out to the Court on Friday.

9 THE COURT: Okay. Let me just add to my colloquy with
10 Mr. Bentley. What goes with that, by allowing the debtors to
11 put in a supplemental expert report then as well, I don't
12 expect to get to a trial and find out that somebody's got a new
13 theory or new data that hasn't been set out in the expert
14 reports. So it needs to be in the expert reports. After a
15 cross-examination, you can redirect your expert, but I don't
16 want to hear saying, we've been sandbagged because now they've
17 laid out a new theory that they've gotten three rounds of
18 expert reports, supplemental expert reports, et cetera, and
19 this is nowhere to be found in there. So that's the other side
20 of the coin on it. Okay?

21 MR. RAINS: Thank you, Your Honor.

22 THE COURT: All right.

23 MR. BRYAN: Your Honor, Patrick Bryan for Ally. If I
24 can just briefly --

25 THE COURT: Go ahead, Mr. Bryan.

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1 MR. BRYAN: -- address the schedule. Unfortunately,
2 we didn't see the schedule before it was submitted to Your
3 Honor. We are happy with the October 26 date. We are
4 continuing to work with the committee on search terms. But we
5 believe we can live with the dates that are proposed.

6 One minor change that I proposed to Mr. Rains before
7 the hearing concerns paragraph number 5. We propose altering
8 paragraph 5 so that it refers to nondebtors, other than Ally,
9 shall respond to discovery by November 16th. We'd like to
10 leave open the possibility, Your Honor -- Ally's considering
11 serving discovery on objecting parties as well, and we'd like
12 to leave open the possibility to do so by the end of this week
13 and have that discovery responded to by November 16.

14 THE COURT: What have you been waiting for?

15 MR. BRYAN: Well, Your Honor, we have been served with
16 discovery from objectors not so long ago.

17 THE COURT: Right.

18 MR. BRYAN: And we've been dealing with those issues
19 and reviewing our own document discovery. And we think the
20 issues are now ripe. We have very targeted discovery that we
21 think may be appropriate.

22 THE COURT: What is it that you're asking with respect
23 to paragraph 5?

24 MR. BRYAN: Simply that it leaves open the possibility
25 for nondebtors like Ally to serve discovery and it be responded

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1 to in a timely fashion by November 16.

2 THE COURT: Mr. Kaufman, you want to be heard?

3 MR. KAUFMAN: Your Honor, I had the same reaction you
4 did. We served Ally with discovery requests in August. So the
5 notion that suddenly they're going to be propounding new
6 discovery requests on us, we think, is inappropriate. The
7 proposed scheduling order leaves in place deadlines that have
8 already passed.

9 THE COURT: Ally's --

10 MR. KAUFMAN: We think those deadlines have passed.

11 THE COURT: -- request is denied.

12 Anybody else wish to be heard?

13 All right, Mr. Rains, you'll continue to work on
14 trying to get the order finalized; hopefully there won't be any
15 other glitches along the way, okay?

16 MR. RAINS: We will, thank you, Your Honor.

17 THE COURT: All right, thank you very much. We spent
18 a lot of time on this, so --

19 Mr. Bentley or -- yes, Mr. Bentley, your letter raised
20 discovery issues. Let's get this out of the way now.

21 MR. BENTLEY: Correct, Your Honor. And my partner,
22 Mr. Kaufman --

23 THE COURT: Mr. Kaufman.

24 MR. BENTLEY: -- will be handling that.

25 MR. KAUFMAN: Your Honor, our letter last evening

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1 simply identified what we believed the remaining issues are. I
2 don't know whether the Court would prefer to discuss those or
3 whether you would prefer exchange of letter briefs, or
4 something else. I'm happy to go through them if the Court will
5 give us the time to do that.

6 THE COURT: Tell me, the first dispute you raise is --
7 you say "unable to reach an agreement with AFI concerning the
8 scope of additional document requests required by AFI or as to
9 search terms." What's the give-and-take on this? What's
10 the --

11 MR. KAUFMAN: As far as I understand it, we've not
12 reached agreement on either the date by which AFI has to begin
13 searching -- the debtors have agreed to a June 1 forward date;
14 Ally has not.

15 THE COURT: Let me hear from Ally with respect to the
16 June 1 date.

17 MR. KAUFMAN: Sure.

18 MR. BRYAN: Your Honor, that request -- again, Patrick
19 Bryan for Ally. That request was just made yesterday. We
20 agreed with the committee that we would run the extended search
21 period, using both our terms and their search terms, and that
22 we would get those results from our vendor and engage in that
23 dialogue.

24 THE COURT: You've agreed to search back to the June 1
25 date?

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1 MR. BRYAN: With the reservation, Your Honor, if we
2 are dealing with -- the date also goes forward in time. So we
3 have agreed to search it, engage in a meet-and-confer; if the
4 results are extraordinarily burdensome and we cannot comply
5 with it, we will confer with the committee and see if we can --

6 THE COURT: Well, let's take it one piece at a time.
7 The one piece is you've agreed to search back to June 1, 2011.

8 MR. BRYAN: We have agreed to run that search, Your
9 Honor.

10 THE COURT: Okay. All right. And what you're
11 reserving is what?

12 MR. BRYAN: Two issues, Your Honor: both search terms
13 and the expanded date range. Now, I think a little bit of
14 background is necessary here, Your Honor. Back in June when we
15 got the committee's 2004 subpoena, they requested all documents
16 regarding the RMBS trust settlement agreement, and all
17 documents regarding the PSA. We engaged the committee at that
18 time to reach agreement on search terms. When we actually had
19 accepted and exchanged search terms and reached -- at least we
20 were moving forward, and we adopted many of their terms. Back
21 in July --

22 THE COURT: That sounds to me that you didn't adopt
23 their terms.

24 MR. BRYAN: Well, Your Honor, with respect to RMBS,
25 those requests, we were very close. In fact, there was very

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1 little difference. Now, in July the committee stopped
2 discussing search terms with us because the examiner was likely
3 to be appointed. We continued to ask --

4 THE COURT: All right, here's what we're going to do
5 on the discovery dispute: Counsel to the discovery dispute
6 will come to chambers at 2 o'clock this afternoon and we'll
7 resolve the discovery dispute at 2 o'clock rather than taking
8 the time now.

9 MR. BRYAN: Very good, Your Honor.

10 THE COURT: All right. Okay, what's next?

11 MS. BARRAGE: Good morning, Your Honor. Alexandra
12 Barrage of Morrison & Foerster, on behalf of the debtors. I'm
13 here to address the second item, the status conferences for
14 today relating to the filed pre-auction objections of the RMBS
15 trustees.

16 THE COURT: Yeah.

17 MS. BARRAGE: Following our earlier status conference
18 on September 27th, the parties, despite attempts by all
19 parties, have been unable to resolve the issues that were
20 raised in the pre-auction objections. Obviously, from the
21 debtors' perspective, resolving these issues is paramount to
22 ensuring a successful auction and a sale hearing. Again, the
23 parties have worked diligently on these matters, and certainly
24 from the debtors' point of view, will continue to do so up
25 until the hearing that's scheduled on October 17th.

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1 Your Honor may be aware that we filed a reply early
2 last night.

3 THE COURT: I didn't -- I'm not aware of --

4 MS. BARRAGE: We don't have to address, unless Your
5 Honor requests --

6 THE COURT: I don't.

7 MS. BARRAGE: -- the points therein. But we thought
8 it would be helpful to frame the issues one week in advance of
9 the hearing. We also think that it's important for parties to
10 understand the nature of these objections, within the larger
11 context of the case.

12 Candidly, Your Honor, we understand the trustees
13 concerns, and we've been receptive in our discussions to
14 various types of proposals for meeting their objections and
15 addressing them. But given where we are today, we think the
16 most efficient and straightforward solution is one that
17 balances several competing interests of the debtors, again, to
18 proceed to auction in a smooth fashion as well as -- and to the
19 sale hearing, and the concerns about the trustees about being
20 indemnified for certain pre-closing indemnification obligations
21 that, if Nationstar were the successful bidder, Nationstar
22 would not be picking up.

23 Our proposal involves setting up an escrow; we've
24 raised that proposal with the trustees. We think --

25 THE COURT: Let me interrupt you.

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1 MS. BARRAGE: Sure.

2 THE COURT: I encourage you to reach an agreement with
3 the trustees. I hope you will reach an agreement with the
4 trustees. An agreement usually involves compromise on all
5 sides. You'll either reach an agreement or I will hear the
6 objections next week.

7 MS. BARRAGE: Right.

8 THE COURT: Don't lay out for me what you've proposed,
9 which is essentially settlement of disputed issues. I hope you
10 can resolve them. Are all the briefs in?

11 MS. BARRAGE: The trustees may want to file a
12 surreply, Your Honor; I'll let them address that. But -- I can
13 hand over the podium to Mr. Weitnauer for that.

14 THE COURT: Okay.

15 MR. WEITNAUER: Your Honor, Kit Weitnauer from Alston
16 & Bird, on behalf of the group of trustees. In your earlier
17 remarks, you gave us until noon this Friday for a response to
18 what they filed last night, and we will be filing something.

19 THE COURT: All right. Thank you. Are the parties
20 still trying to come to an agreement?

21 MR. WEITNAUER: Absolutely. We are.

22 THE COURT: Okay. I mean, the hearing is scheduled
23 for Wednesday, October 17th. The auction is when? October
24 23rd and 24th?

25 MS. BARRAGE: That's correct, Your Honor. The auction

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1 on the servicing platform starts on October 23rd, which is a
2 Tuesday.

3 THE COURT: You know, I try to get my decisions out
4 quickly, but don't -- if you saw my desk, I've got this
5 incredibly large pile of things that I'm trying to get through.
6 So don't assume you're going to have a decision by the 23rd. I
7 mean, I understand the need to get things done, and I've tried
8 to get things done rapidly, but take that into account.

9 MS. BARRAGE: We're mindful of Your Honor's burden,
10 not just in this case but I see your other dockets. I --

11 THE COURT: I get more binders in this case to go
12 through, than in any other case I have.

13 MS. BARRAGE: Your Honor, I think I speak for all
14 parties when I say we truly hope we can reach a resolution by
15 the 17th.

16 THE COURT: Okay. All right, but don't lay out what
17 the bid-and-ask is; you'll either resolve it or you won't.
18 Okay?

19 MS. BARRAGE: Understood.

20 THE COURT: Thank you.

21 MS. BARRAGE: Thank you, Your Honor.

22 THE COURT: Mr. Siegel, you need a last word?

23 MR. SIEGEL: I don't need the last word. I'm actually
24 not going to disagree with anything Ms. Barrage said, but I do
25 have to mention one thing, because we don't want to give people

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1 a misimpression. In a moment of, I think, over-enthusiasm, the
2 debtor posted to the Web site an amendment we've not yet agreed
3 to, which has now been made available to the other bidders;
4 this is perhaps part of the ultimate solution. It may in fact
5 turn out to be a document that we agree to, but we have to make
6 it clear to everybody that that document posted has not yet
7 been finally agreed to by us. I think, given the pressure that
8 they faced with the auction, it's understandable what happened,
9 but we can't say that we've agreed to it yet.

10 THE COURT: Okay. Thank you.

11 Ms. Barrage?

12 MS. BARRAGE: Thank you, Your Honor. Just to clarify
13 one point, the agreement that counsel for --
14 Mr. Siegel referred to --

15 THE COURT: You posted an amendment to the APA?

16 MS. BARRAGE: No, Your Honor. We did not post
17 anything, to my knowledge, to the Web site. We provided a form
18 of omnibus pooling and servicing agreements to bidders.

19 THE COURT: Okay.

20 MS. BARRAGE: Our understanding was that, at least as
21 to form and substance, the trustees had agreed to it.

22 THE COURT: All right, we'll leave -- Mr. Siegel says
23 he hasn't agreed.

24 MS. BARRAGE: I understand, Your Honor.

25 THE COURT: It is what it is, okay?

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1 MS. BARRAGE: Just wanted to clarify the record on
2 that point.

3 THE COURT: All right. Okay, thank you, Ms. Barrage.

4 MS. BARRAGE: Thank you.

5 THE COURT: Mr. Marinuzzi?

6 MR. LEMAY: Your Honor, would now be a good time for
7 me to talk to you before you get to the contested matters?

8 THE COURT: Sure. Quickly.

9 MR. LEMAY: Your Honor, David LeMay, counsel for the
10 examiner. And I think now probably is the right time, just
11 because this is more relevant to what's been talked about. We
12 found out last night, around 7, about the proposed timing
13 change that Your Honor has just heard about. Mr. Gonzalez, the
14 examiner- and we spoke this morning -- he asked me to come
15 down here and address the Court very briefly.

16 Of course the timing is what the timing is. I'm here
17 really just to talk about some of the implications of that
18 timing for the examiner's report. We have seen in the past,
19 with respect to the prior subservicing dispute that was then
20 settled on an interim basis, and we are seeing now with respect
21 to the RMBS dispute, that a lot of the people who must, and
22 absolutely must, be prepared for and give depositions in those
23 disputes are the very same people we need to talk to in doing
24 our examination.

25 And we are in the midst of -- we are at it hammer and

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1 tongs; I don't think anybody in the courtroom will say
2 otherwise. We are getting document discovery; we're reviewing
3 it. We have completed a first round of interviews, or I should
4 say we're in the midst of a first round of interviews; that's
5 approximately twelve people. We're part of the way through
6 those twelve. We are on the verge of identifying and then
7 attempting to schedule a much larger second round of
8 interviews, in the neighborhood of some thirty to forty people.

9 I think it's fair to assume that many, most, or even
10 all of the deponents in the RMBS litigation, who must be
11 deposed now before November the 16th, are the very same people
12 we're going to need to talk to. You can see where I'm going
13 with this, Your Honor. And obviously this is not a fault
14 issue; it's not anything other than just an intractable
15 problem: the same witness can't be in two places at the same
16 time, for either preparation or for the actual interview.

17 With the RMBS litigation, fact discovery, closing of
18 witnesses, depositions ending on November the 16th, we then are
19 starting to look at a window for us, and of course very quickly
20 we find ourselves not too long after that into the December
21 period. And all experience teaches that although the examiner
22 and his professionals don't intend to slack off in December,
23 it's just as a practical matter very hard to pin down a bunch
24 of witnesses. And so that latter half of December is a tough
25 time.

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1 And then, of course, when all that is said and done,
2 after we've done everything that we've done, we still owe you a
3 report. It will be great to take a lot of depositions and
4 interviews, and great to read a lot of documents, but
5 ultimately that has to be written up.

6 And so although we recognize the need for getting the
7 examiner's report out very promptly, and we projected an early
8 February delivery date when we did our scope order, I'm not at
9 this point formally asking for relief from that.

10 THE COURT: You're just putting everybody on notice
11 that there may be a problem.

12 MR. LEMAY: Mr. Gonzalez said that he thought Judge
13 Glenn would want to know about it sooner or later --

14 THE COURT: This is true.

15 MR. LEMAY: -- or sooner rather than later. So that's
16 one of the reasons he sent me down here.

17 I know everybody's eagerly awaiting the examiner's
18 report; it's obviously very important input into plan
19 negotiations. On the other hand, I think we all heard from the
20 bench, and correctly heard from the bench, at a prior hearing
21 that there should be no notion that the case is on ice until
22 then, and that all these other parties can be doing a lot of
23 good work in the meantime; and we know we're doing that.

24 We'll do our best. We'll do everything we can. I am
25 not, Your Honor, at this point in a position to say I want an

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1 extension or how much of an extension I want; we're meeting
2 with Mr. Gonzalez this afternoon to talk about that and some
3 other things. But I just wanted to make sure that the Court
4 wasn't taken by surprise.

5 THE COURT: Thank you very much, Mr. LeMay.

6 MR. LEMAY: Thank you, Your Honor. Your Honor, may I
7 be excused?

8 THE COURT: You certainly can.

9 MR. LEMAY: I need to get back to a meeting with the
10 examiner.

11 THE COURT: Absolutely.

12 MR. LEMAY: Thank you.

13 THE COURT: All right --

14 MR. PRINCI: Your Honor, may I also be excused?

15 THE COURT: Certainly, Mr. Princi.

16 MR. PRINCI: Thank you, Judge.

17 THE COURT: Mr. Marinuzzi, are you going to pick up?

18 MR. MARINUZZI: I will, Your Honor. Good afternoon,
19 Your Honor. For the record, Lorenzo Marinuzzi, Morrison &
20 Foerster. Your Honor, before we get into the contested
21 matters, just a bit of good news for the Court.

22 I'm going to assume it's not something I said.

23 Your Honor, at a hearing about a month ago, raised
24 with everyone in court the fact that Your Honor had denied the
25 debtors' motion seeking approval of a key employee incentive --

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1 THE COURT: Right.

2 MR. MARINUZZI: -- program. And we went back to the
3 drawing board and we worked with the U.S. Trustee and the
4 committee to restructure that program in a way that we thought
5 addressed the Court's concerns and the concerns of the U.S.
6 Trustee. And we're pleased to have filed yesterday a motion
7 asking Your Honor to approve the KEIP program as modified. In
8 connection with that filing, we took Your Honor up on Your
9 Honor's invitation to do it on short notice.

10 So I don't know if the order's been entered, but we
11 would ask that, to the extent Your Honor was agreeable to doing
12 so, that it be heard on the 17th, with objections due at noon
13 on the 15th. We hopefully will not see any objections, and we
14 hope that it satisfies Your Honor's concerns as expressed in
15 the decision denying the original KEIP. I wanted to bring that
16 up for the Court.

17 THE COURT: Okay. I didn't see the order. I clearly
18 made clear I was prepared to do this on shortened time. The
19 order will be entered, putting it on for the 17th with the 15th
20 as a deadline. Hopefully there won't be objections, but we'll
21 see.

22 MR. MARINUZZI: Thank you, Your Honor.

23 THE COURT: Thank you very much.

24 MR. MARINUZZI: Thank you. So that brings us to the
25 debtors' application to pay PwC and otherwise perform under the

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1 consent order and the related 327(e) retention applications for
2 Pepper Hamilton and Hudson Cook. And when we were here last on
3 the 27th, the debtors expressed a view that the consent order
4 is the consent order and we have obligations. And we
5 sympathize certainly with everybody's view, including our own
6 obviously, that it's a very expensive foreclosure review and
7 that we would like to think that reasonable people thinking
8 about this reasonably could come to some other resolution that
9 would cost the estate less money and also provide the benefits
10 that the entire review is designed to provide to those that
11 have been injured through the foreclosure process.

12 And after that hearing, we met with the committee, a
13 very lengthy meeting; told them the story about the foreclosure
14 review and the consent order; expressed our views again; and
15 committed to work with them to see if there is some resolution
16 that allows us to continue to perform the obligations we
17 believe we have to perform under the consent order, but leaves
18 open the possibility that we can continue some discussions with
19 the Fed to see if maybe they'll have a change of heart.

20 And so what we arrived at, Your Honor, was presenting
21 interim orders that are based on the original proposed orders
22 that were submitted with the applications. And I believe
23 copies of the marked orders were brought to chambers this
24 morning; if Your Honor doesn't have one --

25 THE COURT: I didn't --

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1 MR. MARINUZZI: -- I'd like to hand one up.

2 THE COURT: I didn't see them, so why don't you --

3 MR. MARINUZZI: Okay. And we'll start with

4 PricewaterhouseCoopers.

5 THE COURT: Okay.

6 MR. MARINUZZI: Your Honor, this reflects the comments
7 and thoughts from the two parties that objected: the committee
8 and Wilmington Trust; we shared it this morning with
9 Mr. Masumoto, who I don't see; I don't know if he has any
10 comments or questions on the order. But it is fairly easy to
11 see what we've done here. We've converted the order into an
12 interim order; the idea is that it'll be an interim order for
13 approximately ninety days, and we'll have a hearing around the
14 ninetieth day where we'll ask the Court to enter it on a final
15 basis in the absence of some other resolution.

16 The modifications: Obviously, the preamble reflecting
17 the pleadings that were filed in connection with the motion.
18 And we've modified the operative language in the order to show
19 that this is being granted on an interim basis, to make it
20 clear that the costs payable to PwC are allocable to GMAC
21 Mortgage, which is a concern that Wilmington Trust had. And
22 paragraph 3 of the consent order says GMAC Mortgage shall
23 conduct the foreclosure review. We've also reflected that the
24 authority granted to the debtors to perform their obligations
25 under the consent order, which was part of the original GA

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1 servicing order, were ratified by the Court. And again, this
2 is all on an interim basis.

3 And what we're going to try to do -- because under the
4 consent order, the Fed will call us up and say, we need you to
5 do X, Y and Z. And Your Honor may recall at the hearing on the
6 27th, I indicated that the Fed had agreed on a form of
7 engagement letter for Grant Thornton, which obviously the
8 debtors and Grant Thornton had agreed to as well, and that's to
9 fulfill the obligations set forth in paragraph 22 of the
10 consent order, for a validation agent. That's something we
11 have to do.

12 And so the question -- and we posed this in our reply
13 papers that we filed on Monday -- is, is this something we can
14 do because the consent order requires it to do, without having
15 to come back to Your Honor with an application, spending the
16 money, which at the end of the day we know we're going to have
17 to engage the validation agent? We hope that we don't have to
18 come back to court with an application on that, but that's just
19 an example of the things that we're going to tell the committee
20 that we need to do. And we've agreed to give them an
21 opportunity, to the extent they think that maybe it's not
22 something we're required to do under the consent order or maybe
23 there's some alternative they'd rather have this Court
24 consider: They can come to court and they could ask Your Honor
25 to change the status quo or prevent us from doing that which we

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1 believe we need to do. I think this accomplishes the goals
2 that we're really trying to accomplish here, which is to comply
3 and to give the committee the opportunity, which we are going
4 to further, to have a conversation with the Fed -- we're
5 arranging for those calls -- they've already sent
6 communications to the Fed to try to arrange for this -- and see
7 if there's something we can do during this ninety-day period to
8 change the cost of this. At the same time, we can comply;
9 we'll give the committee notice. If they think that there's
10 something wrong with what we're trying to do, they have an
11 opportunity to come to court. And I think it resolves our
12 concerns as best as we can.

13 THE COURT: I read your reply; the reply described --
14 I didn't see the marked-up order, but I read the reply. And
15 may I hear from the committee? Mr. Eckstein.

16 MR. ECKSTEIN: Your Honor, Kenneth Eckstein with
17 Kramer Levin, on behalf of the creditors' committee. I'm just
18 happy to be back to work.

19 THE COURT: Holidays are over?

20 MR. ECKSTEIN: Holidays are over. Your Honor, as is
21 I'm sure apparent to you, we were mindful of the Court's
22 observations at the last hearing, where Your Honor expressed
23 some interim views. And we're also mindful, Your Honor, that
24 to the extent we can try to accomplish things without embarking
25 on discovery, we really do want to try to do that. And so we

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1 suggested this approach really as an opportunity to avoid a
2 dispute regarding whether or not the consent order does or
3 doesn't have to be applied as written.

4 We may prove to be maybe naive a bit in terms of
5 hoping to deal with the Fed, but we have delivered a letter to
6 the Fed, and the debtor has assured us that they would like to
7 work with us to try to have a conversation with the Fed. We
8 understand that this goes beyond just the Ally/ResCap order;
9 there are many orders in place affecting many institutions.
10 And we appreciate that there may be policies that may be
11 difficult to modify.

12 That said, ResCap is a Chapter 11 debtor and we think
13 that is a unique factor that we'd like to try to --

14 THE COURT: With the Fed --

15 MR. ECKSTEIN: -- impress upon the Fed.

16 THE COURT: -- you'll either get relief from the Fed
17 or you won't. I don't --

18 MR. ECKSTEIN: So I think that's right.

19 THE COURT: It's --

20 MR. ECKSTEIN: So, basically --

21 THE COURT: It is fairly extraordinary that the fifth
22 largest mortgage servicer, at least when the case started out,
23 is going to spend probably in excess of 250 million dollars
24 just to have professionals review what's being done, as opposed
25 to granting relief to the people who needed it. But -- you

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1 know?

2 MR. ECKSTEIN: So we're going to use our best efforts
3 to see whether or not we can have a constructive dialogue
4 and --

5 THE COURT: Are you agreeable to the form of the order
6 that's been presented?

7 MR. ECKSTEIN: We're agreeable to the form of the
8 order. We are deferring any issues with respect to allocation
9 between ResCap and Ally; I think at the last hearing that was
10 reserved, and we understand that that's an issue that will be
11 dealt with at a later date either by the Court or by the
12 examiner. But for the meanwhile, this is a process that we
13 think is in the best interests of all parties involved.

14 THE COURT: Thank you.

15 Anybody else want to be heard? Mr. Schrock?

16 MR. SCHROCK: Good morning, Your Honor.

17 THE COURT: It's still morning.

18 MR. SCHROCK: On behalf of AFI and Ally Bank. We're
19 agreeable to the form of order. I just did not want Your Honor
20 to be surprised that this issue of compliance with the consent
21 order, compliance with the DOJ settlement, it also comes up in
22 the context of the sale of the platform. We did file a limited
23 objection and reservation of rights.

24 THE COURT: I was interested to see that you're
25 objecting to the sale to Nationstar.

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1 MR. SCHROCK: Well, Your Honor, I frame it mostly as a
2 reservation of rights, and we want to make sure the purchase --

3 THE COURT: I didn't read it that way. I read it and
4 I was surprised to see you're objecting to the sale to
5 Nationstar. But, so be it.

6 MR. SCHROCK: Purchaser has to pick up the obligations
7 for the consent order, that is clear, and as well as the
8 debtors have to remain compliant. So, while we're agreeable to
9 put it off for a period of time, I just wanted the Court to be
10 mindful that it will probably come up again.

11 THE COURT: All right. Thank you, Mr. Schrock.

12 MR. SCHROCK: Thank you.

13 THE COURT: Anybody else wish to be heard?

14 MS. LIGHTNER: Your Honor, Mark Lightner from Clearly
15 Gottlieb, on behalf of the Wilmington Trust. We've reviewed
16 the order and it's okay.

17 THE COURT: All right, thank you.

18 Anybody else wish to be heard?

19 All right, Mr. Marinuzzi, I'm going to grant the
20 pending motion to the extent of approving the interim order
21 that's been presented to the Court. I have now had a chance to
22 look at it, and I'm certainly familiar with the matter, so I
23 will go ahead and approve that.

24 MR. MARINUZZI: Thank you, Your Honor. There's a
25 blank that we need to fill in, or chambers could fill in,

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1 regarding final hearing. The idea behind the order is that
2 it's effective for ninety days. I don't think Your Honor has
3 anything on the calendar for January 14th, but I might be
4 mistaken.

5 THE COURT: I'm not even going to respond to that.
6 But go ahead.

7 MR. MARINUZZI: I don't know if Your Honor wants to
8 take the time to think of a different date to have a hearing on
9 this.

10 THE COURT: It wouldn't be the first matter that had
11 gotten resolved by a second interim order as well. But I'll
12 leave that initially to the parties to see whether they can
13 work that out. You know, we're going to finish the trial day
14 at 8:45 p.m. Would you like to take it up then, Mr. Marinuzzi?

15 MR. MARINUZZI: Sure, Your Honor.

16 THE COURT: That'd probably provide an incentive to
17 see whether everybody can get the issue resolved.

18 MR. MARINUZZI: That's fine, Your Honor.

19 THE COURT: So, schedule it for the 14th; it'll be at
20 the end of the calendar.

21 MR. MARINUZZI: Okay. Thank you, Your Honor.

22 MR. ECKSTEIN: That's the Monday -- that's the first
23 trial day?

24 THE COURT: That's the beginning, the first day of the
25 trial.

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1 MR. MARINUZZI: That's the first trial day.

2 MR. ECKSTEIN: That sounds perfect.

3 THE COURT: Right, right, right.

4 MR. MARINUZZI: Your Honor --

5 THE COURT: It's an incentive to everybody to see
6 whether you can either come to an agreement completely or a
7 second interim order or --

8 MR. MARINUZZI: Or a timed trial.

9 THE COURT: Yeah.

10 MR. MARINUZZI: Your Honor, I want to just go back to
11 Grant Thornton for a second, because we did commit, in the
12 pleading that we filed earlier this week, that we would try to
13 get the engagement letter to the committee and the U.S. Trustee
14 and with the Court; but it's subject to the Fed's signoff. And
15 this morning at 9:14, I received an e-mail from the Fed that
16 said they consider the engagement letter to be confidential
17 regulatory information and should not be disclosed without
18 prior permission from the board of governors; any request to
19 disclose or access confidential supervisory information should
20 be submitted pursuant to 12 CFR 261.22. I can't make this up.

21 And so we're going to provide the Fed with a written
22 request that they authorize us to release it. So we're doing
23 the best we can to provide as much information as we can, but
24 we have to operate within these constraints.

25 THE COURT: Okay.

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1 MR. MARINUZZI: Your Honor, then it's really the same
2 argument with respect to the application to retain --

3 THE COURT: Yeah, let me just -- you had the
4 applications to retain Pepper Hamilton --

5 MR. MARINUZZI: And Hudson Cook.

6 THE COURT: -- and Hudson Cook?

7 MR. MARINUZZI: Correct.

8 THE COURT: And you have an interim order to present
9 with respect to them as well.

10 MR. MARINUZZI: That's correct, Your Honor. I'm happy
11 to hand it up.

12 THE COURT: Is that agreed to as well?

13 MR. MARINUZZI: Your Honor, yes, it is.

14 THE COURT: All right, that's approved as well.

15 MR. MARINUZZI: Okay, and we'll fill in the date.

16 THE COURT: Okay, I've --

17 MR. MARINUZZI: We'll submit it to chambers.

18 THE COURT: Yes, okay.

19 MR. MARINUZZI: Your Honor, that's all I have. Next
20 item on the agenda is the debtors' motion approving procedures
21 by which third parties can request and obtain stipulated relief
22 in the automatic stay. I'll turn --

23 THE COURT: Right, and as I under --

24 MR. MARINUZZI: -- this over to Norm Rosenbaum.

25 THE COURT: Well, as I understand it, you're going

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1 forward with the proposed order with respect to everybody other
2 than Bank of America, and reserving as to Bank of America, and
3 still trying to work it out with Mr. Teitelbaum.

4 Mr. Rosenbaum?

5 MR. ROSENBAUM: That's correct, Your Honor. It's
6 JPMorgan Chase.

7 THE COURT: Okay. I admit I said Bank of America.
8 It's JPMorgan Chase. All right. I'm familiar with the matter.
9 The motion is granted; obviously, it's reserved as to JPMorgan
10 Chase; hopefully you'll be able to work it out.

11 MR. ROSENBAUM: Thank you, Your Honor. We'll submit
12 the order.

13 THE COURT: Okay. Thank you.

14 MR. MARINUZZI: Your Honor, that, I believe, brings us
15 to the renewed motion of Paul N. Papas, II --

16 THE COURT: Yes. We're going to take a ten-minute
17 recess --

18 MR. MARINUZZI: Fine, Your Honor.

19 THE COURT: -- before I launch into those.

20 MR. MARINUZZI: Thank you, Your Honor.

21 (Recess from 11:51 a.m. until 12:09 p.m.)

22 THE COURT: Please be seated. Sorry. Okay. Who is
23 going to pick up here?

24 MS. MARTIN: Good morning, Your Honor. Samantha
25 Martin from Morrison & Foerster on behalf of the debtors.

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1 I believe the next item on the agenda is Mr. Papas'
2 motion to convert the cases.

3 THE COURT: All right. Is Mr. Papas present?

4 MS. MARTIN: I believe he may be --

5 MR. PAPAS: Yes, I am, Your Honor.

6 THE COURT: Go ahead Mr. Papas --

7 MR. PAPAS: Can you hear --

8 THE COURT: -- go ahead and argue your motion.

9 MR. PAPAS: Good morning. How are you?

10 THE COURT: It's afternoon, but go ahead, Mr. Papas.

11 MR. PAPAS: Okay. All right. Thank you. I take it
12 you have read my renewed motion, the memorandum in support, and
13 my reply.

14 THE COURT: I did. I read everything.

15 MR. PAPAS: Okay. I do want to make a comment
16 initially. On my reply, I only addressed ResCap. I did not
17 address the unsecured creditors' committee, their objection,
18 simply because it came in after the date that I noticed for the
19 objections to be filed, which is October 1st. Now I do see
20 that their objection is essentially the same as ResCap's.

21 Basically, I'll give you a very brief history of how
22 GMAC and I came together. I've been in the real estate
23 business since 1970 professionally, and we buy a lot of short
24 sales. We negotiate short sales. We fund or help fund and
25 raise financing for various-sized companies. And one of the

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1 fundamental things that we do is we always find out what it is
2 that the company owns before there can be any financing
3 arranged.

4 We always want to know what's available to be
5 attached, if you will, encumbered, so that we can see what
6 might be available so that a potential client who has funds may
7 want to invest or help that company out. So that's the premise
8 of my motion.

9 But GMAC and I came together in approximately 2008
10 when I was negotiating short sales for one particular woman in
11 Arizona. She owned five different properties. And during that
12 period, I recorded options to purchase. Then shortly
13 thereafter, for whatever reason, she filed bankruptcy
14 protection in Chapter 7. So then I became a creditor in that
15 particular case. I attended a hearing where I expressed my
16 desire to purchase those five properties, and I continued to
17 negotiate with the different -- the five different lenders in
18 order to work out the short sale options on each of those
19 properties. The only property that we were able to come to
20 some agreement with was GMAC. All the documents are available;
21 but the short version is at the time when they filed their
22 motion for relief from stay, they did not notice me and those
23 documents are available.

24 So then I filed for a hearing and had a hearing at the
25 bankruptcy court in Arizona where I attended in person and GMAC

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1 was represented by Pite Duncan. And the short version is that
2 the bankruptcy court judge ruled that they should have noticed
3 me and he was not going to reverse the auction sale because
4 they had sold it to a third-party, and he told me that my
5 relief was in the state superior court. So then we proceeded
6 in the state superior court, and from there, that -- it turns
7 out that that party who had the purchase -- had purchased the
8 property at the auction was an entity that didn't exist and
9 then they were -- they are a defendant in that suit. And then
10 they turned around and they sold the property during the period
11 of the pendency of the suit, shortly -- and it was well after
12 they were served.

13 So what we have there is several violations of the
14 Uniform Fraudulent Transfer Act, and that's why I keep
15 mentioning it because this is a pattern that keeps occurring.
16 There's a property that's mentioned in this particular case.
17 It's in Marlboro, Massachusetts. And in that particular case,
18 there was a purchase and sale agreement that was properly
19 executed with the proof of funds presented to GMAC through
20 common law, and for whatever reason, they had the auction
21 anyway, even though it was well-stated and it's well-documented
22 that if the woman had a purchase and sale agreement, then they
23 would postpone the auction and they would allow her to sell the
24 property so that she could pay off the mortgage out in full,
25 because the price that we were offering happened to exceed the

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1 amount of the mortgage because that particular property at that
2 particular time still had equity in there. I don't believe it
3 does today but at the time it did. And so that's -- now the
4 property in Marlboro, Mass.

5 There's another property that's mentioned in these
6 documents and that's a property in Scottsdale, Arizona. And
7 that property, GMAC had the mortgage. They sold it to Fannie
8 Mae and then they rescinded the sale. And then again, this
9 year, while the stay was on --

10 THE COURT: Mr. Papas, let me try and focus you.
11 What's the specific basis on which you seek to convert this
12 Chapter 11 case to a case under Chapter 7?

13 MR. PAPAS: Sure. Okay. The papers --

14 THE COURT: Because I've read all your papers, Mr.
15 Papas.

16 MR. PAPAS: Okay.

17 THE COURT: Not only this set of papers but the prior
18 motion that you filed.

19 MR. PAPAS: Okay. All right. Well I appreciate that.
20 My basis is bad faith and misconduct of the debtors, because my
21 belief is that they -- that the debtor has not properly stated
22 what they own; that their schedules are not correct and that's
23 why I attached the deed and several other documents to show
24 that on one hand, they're saying that they own certain things
25 and they don't, because the documents don't show that out.

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1 On the other hand, they're saying they do not own
2 property when, in fact, there's a deed that says they do. So
3 it goes back to very simple; they have not been truthful and
4 forthright with the Court in exactly delineating what they
5 owe -- what they own.

6 Now I don't know what else may be amiss because I
7 don't have access to all the documents and I'm not an
8 accountant, but the problem is that there's no way of knowing
9 exactly what the estate is. So before there's a sale, there
10 should be an exact accounting of what is available for sale.
11 And because of the various violations which I go through in the
12 documents, and I can easily give you more, it's my belief that
13 they have conducted fraudulent transfers for things that they
14 don't own. And so for that reason alone, I think everything
15 should come to a stop until such time as we actually know
16 what's available. Now --

17 THE COURT: All right. I'm going to cut you off
18 there. I understand your arguments, Mr. Papas.

19 MR. PAPAS: Okay. All right.

20 THE COURT: Go ahead, counsel.

21 MS. MARTIN: Thank you, Your Honor.

22 THE COURT: Just pull the microphone a little closer.

23 MS. MARTIN: Sure.

24 THE COURT: Thank you.

25 MS. MARTIN: Before I begin discussing the merits of

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1 Mr. Papas' conversion motion, I would just like to take a
2 minute to discuss the relationship between Mr. Papas and the
3 debtors. To start, there is no relationship, Your Honor. Mr.
4 Papas is not a borrower to GMAC under a mortgage loan. He's
5 also not a party to or beneficiary of any of the servicing
6 agreements. He appears to be concerned with GMAC because he's
7 interested in purchasing certain properties that are from GMAC
8 borrowers, as he mentioned; and those borrowers typically are
9 going through foreclosure or eviction proceedings.

10 Due to this attenuated relationship, Mr. Papas has
11 participated in several proceedings among the debtors and
12 certain borrowers; and in one instance, he was named as a
13 defendant in a lawsuit along with GMAC because the borrower
14 noted that Mr. Papas claimed to have an interest in all of
15 GMAC's property and he had given the borrower permission to
16 continue residing there.

17 In several of these actions, Mr. Papas has filed
18 numerous, frivolous pleadings which have been denied. In the
19 first case, which I believe is the case that Mr. Papas just
20 mentioned in the Superior Court of Arizona, case number CV-
21 2010-050028, Mr. Papas was actually sanctioned and ordered to
22 pay GMAC's attorneys fees of approximately 13,000 dollars, and
23 he was also later prohibited by that court from making any
24 future filings against GMAC and from serving additional
25 discovery requests on GMAC in that case without prior court

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1 approval.

2 With this --

3 MR. PAPAS: Well that information is not --

4 THE COURT: No, please don't interrupt. No one
5 interrupted you, Mr. Papas.

6 MR. PAPAS: Sorry.

7 THE COURT: Go ahead.

8 MR. PAPAS: Sorry. Sorry.

9 MS. MARTIN: With this background in mind, I would
10 like to turn to the conversion motion. As you noted earlier,
11 Mr. Papas is seeking to convert the debtors' Chapter 11 cases
12 to Chapter 7 cases without providing legal or factual support.
13 The bankruptcy court (sic) provides that the Court may convert
14 a case or dismiss it if the movant shows by a preponderance of
15 the evidence that cause exists for conversion unless the Court
16 determines that the appointment of a trustee or examiner is in
17 the best interests of the creditors and the estate. And, Your
18 Honor, Mr. Papas has not met that burden here.

19 For the reasons described in our reply or our
20 opposition, I should say, Mr. Papas did not establish cause as
21 defined by Section 1112(b)(4). He makes general allegations
22 regarding the bad faith and misconduct of the debtors but does
23 not address them with any specificity.

24 With respect to some of the issues Mr. Papas just
25 raised on the phone, the debtors do believe their schedules are

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1 correct as of the petition date. Some of the documents to
2 which Mr. Papas refers are dated as of different dates and
3 thus, there is probably a discrepancy there because the
4 property was transferred in the interim. To the extent the
5 debtors discover that there are any errors in their schedules,
6 they can amend those and there's no reason for the Court to
7 convert the cases on that basis.

8 In addition, with respect to Mr. Papas' other point,
9 the debtors are not seeking to sell any assets that they don't
10 own. The purchase agreements will provide representations that
11 the debtors own the assets they are selling. And to the extent
12 the purchasers discover otherwise or any of the parties
13 discover otherwise, those assets will not be sold by the
14 debtors to the purchasers.

15 Going back to some of the reasons we set forth in our
16 opposition, this Court has already appointed an examiner to
17 oversee the Chapter 11 cases. The debtors believe that any
18 further oversight in Chapter 7 is unnecessary and unwarranted.
19 In addition, liquidation under Chapter 7 would not provide a
20 maximum return to creditors, especially as compared to the
21 proposed return that the debtors anticipate from the upcoming
22 sales and some of the other issues in these cases.

23 Third, Mr. Papas relied in part on the Gilbert motion
24 which Your Honor has already denied. The Gilberts sought to
25 dismiss these cases, and Your Honor determined that the

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1 Gilberts did not establish cause for dismissal and I should
2 note that that motion was brought on substantially similar
3 grounds.

4 And finally, the Bankruptcy Code provides that the
5 Court may not convert the case if the Court decides that it is
6 not in the best interest of creditors and the estates; and we
7 believe that is the case here. The debtors are poised to sell
8 substantially all of their assets in the near future. We also
9 have established that it's in our best interest to continue
10 operating in the ordinary course of business until those sales
11 can be consummated.

12 And finally, the debtors are negotiating a plan of
13 reorganization with their major constituents, and it is likely
14 to be confirmed within a reasonable period of time.

15 THE COURT: Thank you.

16 MS. MARTIN: Thank you.

17 THE COURT: All right. I don't need to hear any
18 further argument. The Court's prepared to rule. On September
19 14, 2012, Mr. Papas submitted the renewed motion to convert
20 debtor to Chapter 7 bankruptcy. It's at ECF docket number
21 1472. On September 21st, Mr. Papas also filed a memorandum in
22 support of motion to convert debtor ResCap to Chapter 7.
23 That's at ECF number 1547.

24 The debtor filed its objection. The creditors'
25 committee likewise filed an objection. On October 5th, Mr.

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Papas filed a reply to debtor ResCap/GMAC opposition to motion to convert the debtor to Chapter 7. That's at ECF 1731.

The issues raised by Mr. Papas' motion have previously been considered and rejected in connection with the Court's opinion in connection with the Gilbert motion to lift the automatic stay. The Gilbert motion was found at ECF docket number 274, and the Gilberts sought dismissal of the underlying Chapter 11 bankruptcy based upon the bad faith and misconduct of the debtors.

In this renewed motion, Mr. Papas seeks conversion because of "the bad faith and misconduct of the debtor ResCap/GMAC." That's ECF 1472 at paragraph number 4.

The standards for dismissal or conversion are set forth in Bankruptcy Code Section 1112(b). Just bear with me a second.

The moving party has the burden of demonstrating cause for conversion. See In re: MF Global Holdings, Ltd. 465 BR 736, 742 (Bankr. S.D.N.Y. 2012). And MF Global cites other cases for that same proposition.

Section 1112(b)(4) provides sixteen examples of events that constitute cause, but the list is not exhaustive, leaving courts the option to consider other factors. Bankruptcy judges have wide discretion to determine whether cause exists to dismiss or convert a case under Section 1112(b). Once the moving parties establish cause, the burden shifts to the

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1 respondent to demonstrate by evidence the unusual circumstances
2 that establish that dismissal or conversion is in the best
3 interests of creditors and the estate. See 7 Collier on
4 Bankruptcy, paragraph 1112.05, subsection 1.

5 The Court has carefully reviewed Mr. Papas' papers,
6 and they set forth no evidentiary or legal support for
7 conversion of this case to a case under Chapter 7. The Court
8 further concludes that Mr. Papas' motion is frivolous. Any
9 effort by Mr. Papas to renew the motion in the event that -- or
10 seeks similar relief on alternate grounds, the Court will
11 entertain a motion by the debtors to impose sanctions against
12 Mr. Papas. For the foregoing reasons as explained, the current
13 motion is denied. Debtors' counsel should submit an order that
14 indicates for the reasons stated on the record, the motion is
15 denied. Thank you.

16 Next matter?

17 MS. MARTIN: Thank you.

18 MR. PAPAS: Thank you. I'll be filing my appeal.

19 MR. NEWTON: Good afternoon, Your Honor. James Newton
20 of Morrison & Foerster on behalf of the debtors.

21 The next items on the agenda are three or four motions
22 filed by Kenneth Taggart, who you're familiar with. I'll just
23 run through them real quickly and then I'll cede the podium to
24 Mr. Taggart.

25 The first one, item number 6 on the agenda is a motion

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1 to reconsider this Court's prior order on Mr. Taggart's first
2 motion for relief from the automatic stay. That motion is
3 located at docket number 1397. Mr. Taggart would like the
4 Court to reconsider, because he believes the Court didn't
5 address all of his concerns or the concerns he had raised in
6 that motion.

7 Item number 7 on the agenda is what we'll call the
8 first sanctions motion. It's filed at docket number 1114.
9 This motion seeks, based on similar issues raised in the
10 reconsideration motion, to have the Court void all pleadings in
11 Mr. Taggart's underlying foreclosure proceeding since the
12 petition date and impose sanctions on the debtors for delay in
13 filing a notice of bankruptcy.

14 Item number 8 on the agenda is Mr. Taggart's amended
15 sanctions motion. This again raises similar issues as the
16 previous two motions and seeks to void pleadings in two appeals
17 Mr. Taggart has taken from orders in the foreclosure proceeding
18 and also to impose sanctions on the debtors for the same
19 reason, for not -- for failure to file a notice of bankruptcy
20 in those cases.

21 And the final motion is item number 9 on the agenda,
22 it's docket number 1587. It's a motion by which Mr. Taggart
23 seeks to have the debtors remove certain purported assets, Mr.
24 Taggart's mortgage and note from the assets of the estate.

25 Mr. Taggart's motions; with that, I'll cede the podium

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1 to Mr. Taggart.

2 THE COURT: All right. Mr. Taggart?

3 MR. TAGGART: Good afternoon, Your Honor.

4 THE COURT: Good afternoon.

5 MR. TAGGART: Okay. May I proceed?

6 THE COURT: Go ahead.

7 MR. TAGGART: Okay. Yeah, I just want to first let
8 the Court know, I believe Mr. -- I'm sorry, Mr. Newton, is it?

9 MR. NEWTON: Yes.

10 MR. TAGGART: Mr. Newton, I'm sorry -- I believe
11 mischaracterized the motion. He's calling, at least the first
12 motion, a motion for reconsideration from the stay. I'm not
13 seeking -- I initially came before this Court to seek
14 clarification of the stay in which the Court issued an order.
15 Upon issuing that order, there were several pleadings going on
16 at the time -- at least part of the time -- in which the Court
17 was -- before this came upon the Court.

18 I'm seeking, pursuant to the Bankruptcy Code, for
19 those pleadings in the state foreclosure case to be voided.

20 THE COURT: The foreclosure case is a case that the
21 debtors commenced against you.

22 MR. TAGGART: Correct.

23 THE COURT: Do you understand that the automatic stay
24 does not apply to a case that the debtors bring but only
25 against actions that you would bring against the debtor?

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1 MR. TAGGART: Yeah, I do. My point being is they
2 asserted just to bring -- refresh the Court's memory if -- they
3 asserted with the Court in the state court, thirty-two
4 counterclaims -- I'm sorry, only one of the thirty-two
5 counterclaims could proceed against them.

6 THE COURT: But you asserted thirty-two counterclaims.

7 MR. TAGGART: I'm sorry, I filed thirty-two
8 counterclaims against GMAC Mortgage.

9 THE COURT: And the issue was under supplemental
10 servicing order, it permits you to proceed with any affirmative
11 defenses but not to seek affirmative recovery from the debtors.
12 Do you understand that?

13 MR. TAGGART: I do. My point is they filed with the
14 Court, a notice to the Court that only one of the thirty-two
15 claims could continue. So for approximately, I believe until
16 June 6th until July 18th, I was not able to proceed in state
17 court with those claims and I was burdened with filing answers,
18 coming back here. So they were proceeding with their case,
19 whereas I was prejudiced. I could not proceed with my case.
20 Do you understand my point?

21 THE COURT: Go ahead, Mr. Taggart.

22 MR. TAGGART: Okay. So yeah, I was just looking for
23 in my opinion, to void those pleadings and sanctions.

24 THE COURT: Mr. Taggart, it seems to me that every
25 time you've lost an issue in state court, you come running here

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1 and you seek to have this court void whatever order a state
2 court has entered against you.

3 MR. TAGGART: They didn't --

4 THE COURT: That's what I read this -- I mean, I have
5 a stack of motions that you have filed. You have been before
6 the Court before. Every time there's an adverse ruling against
7 you in a state court in connection with the foreclosure action,
8 you come back here and complain that the debtor violated the
9 automatic stay, that the order that the state court entered
10 ruling against you is void. I don't review decisions that the
11 state court enters.

12 MR. TAGGART: Your Honor, I've only been before this
13 court one time.

14 THE COURT: Not true.

15 MR. TAGGART: I was only here -- as far as regarding
16 the motion that I filed.

17 THE COURT: Go ahead, Mr. Taggart.

18 MR. TAGGART: Yeah, so I mean I'm just seeking relief
19 that I'm entitled to, I've only been here once, under the Code.

20 THE COURT: Well you're seeking relief. I decide
21 whether you're entitled to it.

22 MR. TAGGART: Yeah, that's -- yeah, I understand. I'm
23 filing, you know, a motion to the Court to do that.

24 THE COURT: Anything else you want to add?

25 MR. TAGGART: Regarding the stay, yeah, there's --

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1 there was two appeals filed in which GMAC never filed any
2 notice of stay whatsoever.

3 THE COURT: These were appeals that you took in the
4 foreclosure action against you, correct?

5 MR. TAGGART: Correct.

6 THE COURT: What is it that leads you to believe the
7 automatic stay applies in an action that one of the debtors
8 commenced against you?

9 MR. TAGGART: I'm sorry, say that again?

10 THE COURT: What is it that leads you to believe that
11 the automatic stay applies in a case that the debtor has filed
12 against you?

13 MR. TAGGART: Doesn't the debtor have an obligation to
14 file a notice in court of notice of bankruptcy in each case?

15 THE COURT: All right. I'm going to take the matter
16 under submission and I'll explain my ruling in writing.

17 MR. TAGGART: Yeah. I apologize, Your Honor. I'm
18 just --

19 THE COURT: That's okay.

20 MR. TAGGART: Okay. I'm --

21 THE COURT: Okay. Mr. Taggart, I have been -- I've
22 tried to be very patient with you and the flurry of motions
23 that I have before me, the motion to void pleadings and
24 sanctions due to violation of Bankruptcy Code, that's ECF
25 docket 1114. A motion for a stay order regarding limited

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1 relief for stay until order on motion to void pleadings and
2 sanctions due to violation of Bankruptcy Code is issued by the
3 Court, docket 1585. Motion to remove mortgage loan alleged by
4 Kenneth Taggart from assets of GMAC Mortgage LLC and motion to
5 prove ownership of mortgage assets, mortgages and notes,
6 Kenneth Taggart dispute assets of GMAC, docket number 1586.
7 Motion for stay to order regarding limited relief from stay
8 until order on motion to void pleadings and sanctions due to
9 violation of Bankruptcy Code is issued by the Court, docket
10 number 1397. I have all of those motions that you have filed
11 pending before me. I will resolve them in a written order.
12 Thank you.

13 MR. TAGGART: Do --

14 THE COURT: Does the debtor want to be heard?

15 MR. NEWTON: Unless you have any questions --

16 THE COURT: I don't. Thank you, Mr. Taggart.

17 MR. TAGGART: Your Honor, can I offer anything more?

18 THE COURT: No.

19 MR. TAGGART: No.

20 THE COURT: I've reviewed all the papers and I will
21 issue a written --

22 MR. TAGGART: Okay.

23 THE COURT: -- order.

24 MR. TAGGART: Thank you.

25 MR. ROSENBAUM: Good afternoon, Your Honor. Norm

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1 Rosenbaum, Morrison & Foerster for the debtors.

2 Your Honor, the next matter on the agenda is the
3 motion of Deborah Bollinger and Bryan Bubnik -- excuse me --
4 for relief from the automatic stay. Counsel for the movants is
5 here. This is docket 677. I will cede the podium to counsel.

6 THE COURT: Okay.

7 MR. SCHUG: Thank you, Your Honor. Robert Schug, from
8 Nichols Kaster for the movants.

9 Just to provide a little bit of background, the
10 movants are ninety-one mortgage underwriters who are part of a
11 Fair Labor Standards Act collective action that was filed in
12 July of 2010 in the Western District of Washington. We're set
13 for a trial in January and we think the most efficient way to
14 go forward is for a trial on all our defendants and not just
15 one. Right now we've got three defendants.

16 THE COURT: You've had the benefit of sitting in court
17 this morning -- benefit or misfortune of sitting through the
18 long docket this morning?

19 MR. SCHUG: I have, Your Honor.

20 THE COURT: Do you have a sense for what is on the
21 Court's docket in the ResCap matter between now and the middle
22 of January?

23 MR. SCHUG: I do.

24 THE COURT: What's your motion to reopen discovery?

25 MR. SCHUG: That hasn't been addressed by the Court

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1 yet. What we had happen in this case was early on, Ally
2 Financial had represented to us that they wouldn't contest the
3 issue of whether they were an employer under the Fair Labor
4 Standards Act. Shortly after the notice of bankruptcy was
5 filed and shortly after the Court entered summary judgment
6 against the defendants on most of their defenses, Ally
7 Financial for the first time told us hey, you know, the stay
8 applies to us. We're not an employer. We can't go to trial.

9 We filed a motion with the Court asking for a status
10 conference to address that before trial and if they were going
11 to present that defense at trial, to let us have some discovery
12 because it was previously the understanding from our end that
13 that issue wasn't going to be a part of the case.

14 THE COURT: So have you been specific about what
15 discovery you want to take?

16 MR. SCHUG: We haven't been specific. We haven't had
17 an opportunity to address the Court specifically on that.

18 THE COURT: Tell me, who is the judge before whom the
19 action is pending?

20 MR. SCHUG: It's Judge Martinez in the Western
21 District of Washington.

22 THE COURT: The class is certified in the case?

23 MR. SCHUG: It's not a Rule 23 class. It's a 216(b)
24 collective action. It has been certified and there are ninety-
25 one members.

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1 THE COURT: It's opt-in?

2 MR. SCHUG: Yes, it's an opt-in.

3 THE COURT: And how many plaintiffs opted-in?

4 MR. SCHUG: Ninety-one.

5 THE COURT: How many defendants in the case?

6 MR. SCHUG: There are three; Ally Financial, GMAC
7 Mortgage and ResCap.

8 THE COURT: Has the judge had a hearing since the
9 bankruptcy was filed?

10 MR. SCHUG: No, he hasn't.

11 THE COURT: Is there one scheduled?

12 MR. SCHUG: There isn't one scheduled. We put in an
13 inquiry to the court about our pending request for a status
14 conference and we haven't heard back yet.

15 THE COURT: Who is going to address this for the
16 debtor?

17 MR. ROSENBAUM: I am.

18 THE COURT: Mr. Rosenbaum?

19 MR. ROSENBAUM: Your Honor, I just want to add that
20 David Golder of Jackson Lewis who is counsel for the defendants
21 in the action is on the phone, in case Your Honor had specific
22 questions about the litigation.

23 THE COURT: And Jackson Lewis represents all the
24 defendants in the case?

25 MR. ROSENBAUM: As of now, yes, Your Honor. Your

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1 Honor as we stated in our papers, I think the -- we've had some
2 closer cases here on stay relief but I don't think is one of
3 them. I think the movants acknowledge in their response that
4 this is going to be at least a ten-day trial. We contend it's
5 a fifteen-day trial but if you meet in the middle, it's still a
6 two-and-a-half week trial. I think there's been some
7 indication in their moving papers that this is trial ready when
8 it's clearly not trial ready, although the debtors believe --

9 THE COURT: Why do you say it's not trial ready?

10 MR. ROSENBAUM: Well although discovery is completed,
11 it's not as if the parties have been preparing for trial. This
12 case has been dormant really for months, and particularly since
13 we've filed. The debtors have not prepared for trial. That
14 would be a substantial effort. We've put in declaration of
15 Jennifer Scoliard, in-house counsel to debtors. We anticipate
16 the cost of preparing for trial would be somewhere in the
17 neighborhood of between 100,000 and 175,000. The trial itself
18 would be between 400,000 and 550,000. This is just to litigate
19 a claim against the debtors that is in the range of 75,000 to 5
20 million. It's not an unlimited amount. So this is a
21 substantial effort from the debtors' perspective solely to
22 litigate a claim.

23 THE COURT: Answer this for me. How would you propose
24 to resolve the claim, if not in the trial in Washington?

25 MR. ROSENBAUM: Well, Your Honor, I'm not sure these

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1 plaintiffs have filed a proof of claim; it's potential to
2 resolve it as a class action before this court. We could do it
3 on individual basis. We could have other procedures such as
4 mediation or ADR; and this is a process we're looking at
5 currently. As of today, there's been 1,000 claims filed.
6 We're a month away from the bar date.

7 So how we manage all these claims is an evolving one.
8 We have thirty-eight -- approximately thirty-eight pending
9 class actions, some of which have been certified, some of which
10 haven't. So this is really a --

11 THE COURT: I saw that in your papers that you
12 referred to the thirty-eight. How many certified class actions
13 are there?

14 MR. ROSENBAUM: I don't have that answer, Your Honor.

15 THE COURT: So here --

16 MR. ROSENBAUM: Can I just one other --

17 THE COURT: Go ahead, Mr. Rosenbaum.

18 MR. ROSENBAUM: Your Honor, we may come down the road
19 in two or three months or four months and decide perhaps it's
20 best to proceed before the district court to liquidate this
21 claim. We hadn't made that decision yet, particularly now.
22 Stay -- relief from the stay should not be granted to allow
23 that trial to go forward.

24 THE COURT: Let me interrupt, okay. Now is clearly
25 not the time to lift the stay to permit a trial to go forward

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1 in district court in Washington -- the state of Washington.

2 And I say that because of the very, very large number of
3 contested matters and other important events in this Chapter 11
4 case that's scheduled between now and the end of January. So
5 on the basis of burden alone, I will not lift the stay at this
6 point in time.

7 You say this case is not trial ready, but other than
8 the issue that's been described to me, I read it in the papers,
9 about discovery and I don't know whether that's intended to be
10 discovery against AFI or against one of the debtors, it
11 nevertheless sounds like a limited amount of discovery. It
12 also sounds like something that may be resolved by stipulation
13 of fact, I don't know but let's assume it's not. It's a
14 limited amount of discovery. You haven't done too well in this
15 case so far. The Court granted summary judgment striking two
16 of the debtors' affirmative defenses, potentially the two most
17 significant affirmative defenses, maybe not. And so the
18 district court in the state of Washington is very familiar with
19 this case.

20 I'm going to deny the motion to lift the stay without
21 prejudice. I guess I should add to this list of important
22 matters that are going on here, and there's certainly some of
23 them reflected in the hearings this morning, the RMBS
24 settlement which is a contested hearing. Expedited discovery
25 has been going on for quite some time, it's quite voluminous;

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1 the examiner's investigation; the Court is still endeavoring to
2 resolve the issue about whether FHFA will get its discovery or
3 when it will get its discovery. So permitting a trial of this
4 collective action to proceed in January would have an extremely
5 negative effect on the debtors' ability to proceed with this
6 case. I left out the auction and whatever motions will result
7 from the auction. So I'm denying the motion to lift the stay
8 without prejudice.

9 What counsel in the underlying case should do -- and
10 if the debtors' trial counsel feels that the automatic stay
11 prevents it from doing this, I will on the record state I am
12 going to lift the automatic stay for the purposes of permitting
13 a case conference with the trial judge in Washington and
14 express my willingness to have a joint telephonic case
15 management conference with the Court in the underlying case.

16 It may well be that applying the Sonnax factors, that
17 the most efficient way to liquidate the claim is to permit a
18 trial to go forward; I'm not making that decision now. It may
19 be that that isn't the most efficient way, that the claims
20 allowance process is the most efficient way. I'm not deciding
21 that. But what the papers show is that the trial court has
22 lived with this case for about two years, has already decided
23 against the debtors the motion for summary judgment striking
24 affirmative defenses; and there was a January trial date.

25 I'm always reluctant to interfere with the district

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1 court's schedule, and I don't know whether in light of events
2 that have taken place or lack of events since the bankruptcy
3 was filed, whether that would be a realistic date or not but I
4 mean the earliest this matter ought to come back before this
5 court for consideration is in February or March. I mean,
6 there's just -- the debtors appropriately are consumed with
7 very, very important matters that are critical to this Chapter
8 11 case. And so I'm not saying that in February or March I
9 would lift the stay, but the debtors shouldn't assume that the
10 stay won't be lifted.

11 To me, I mean there are two issues: one, when; and
12 maybe the more important issue is how, whether it's more
13 appropriate for this matter to be addressed in the claims
14 allowance process. The fact of the matter is, there is a non-
15 debtor affiliate, AFI, it's a defendant in the case, and
16 certainly the district court can decide we're going to go
17 forward with a trial against AFI. I mean that's for the
18 district court to decide. Ordinarily, you know, if a separate
19 trial was required here as to the debtor that wouldn't be the
20 most efficient way to hear it but you ought to advise the
21 district court -- I'm certainly prepared to have a joint
22 conference, hear what the judge has to say about his own
23 calendar and the schedule. But until matters settle down here,
24 which isn't going to happen until February or March, I'm not
25 going to lift the stay. So for the reasons stated on the

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1 record, the motion to lift the stay is denied without
2 prejudice.

3 MR. ROSENBAUM: Thank you, Your Honor.

4 THE COURT: Okay.

5 MR. ROSENBAUM: Should we submit an order?

6 THE COURT: Yes, just simply say the motion to lift
7 the stay is denied without prejudice for the reasons stated on
8 the record.

9 MR. ROSENBAUM: Thank you, Your Honor. I'm sorry.
10 Thank you.

11 THE COURT: Okay.

12 MR. ROSENBAUM: Your Honor, the next matter on is Mr.
13 Connor's motion and --

14 THE COURT: Right. Is Mr. Connor present?

15 MR. CONNOR: I am, Your Honor. It's Joseph Connor.

16 MR. ROSENBAUM: And, Your Honor, Erica Richards from
17 Morrison & Foerster will be addressing this.

18 THE COURT: Okay. Go ahead, Mr. Connor.

19 MR. CONNOR: Thank you, Your Honor. I see you've got
20 your hands full with huge matters, and I just have small
21 matters. So -- and I have benefitted from sitting here, so I
22 am going to try to get you off to lunch as quick as I can.

23 I have two -- three actually small housekeeping
24 matters and -- to get out of the way, and I don't want to make
25 a meal out of anyone of them but I just want to get them done,

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1 stated, and over with if that's okay with Your Honor.

2 THE COURT: Go ahead, Mr. Connor.

3 MR. CONNOR: Okay. Thank you. The first is that I
4 didn't get served with the debtors' objections to this motion
5 until yesterday. I'm not sure whether Ms. Richards ever
6 intended to serve me at all. I assume she did but in any case,
7 I didn't get served and -- but I did get the paperwork and
8 actually partially with her cooperation last week.

9 And my point here is that it had to come in an
10 unorthodox manner, and I mean correct me if I am wrong, but I
11 think I have a right to be properly served and on time and with
12 proof of service documents. And my only wish here is that Your
13 Honor could remind Ms. Richards that I do have that right. So
14 that was thing number one.

15 Now also in thing number one, Ms. Richards informed me
16 on Monday morning that she was filing additional materials with
17 the Court for today's hearing and I told her I needed to be
18 served those. Now, I don't know whether you've got them. Ms.
19 Chung said yesterday you didn't but if you have them, I don't.
20 So I don't know what the state of these additional materials is
21 or what they are.

22 The second quick thing is that in talking with Ms.
23 Richards, I've asked her who her clients actually are and in
24 what sense she might be representing --

25 THE COURT: Mr. Connor?

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1 MR. CONNOR: Uh-huh?

2 THE COURT: Mr. Connor?

3 MR. CONNOR: Yeah?

4 THE COURT: You have filed a motion relating to
5 possible violations of the automatic stay. Address your
6 comments to your specific motion. I don't want to hear about
7 your back-and-forth with counsel for the debtor. Tell me
8 why -- what it is --

9 MR. CONNOR: Well --

10 THE COURT: What relief are you seeking and why?

11 MR. CONNOR: Oh, okay. I'm sorry. I just have
12 those --

13 THE COURT: Mr. Connor, just tell me what relief
14 you're seeking and why.

15 MR. CONNOR: Yes. I asked the Court for a declaratory
16 ruling about actions that were taken by the Washington State
17 Court that I enumerated in my motion. I did it just because it
18 seems as if a declaratory ruling is proper, that it lets
19 everybody know where they stand and it's final. And if such
20 actions were constituted violations of the automatic stay, I
21 sought to have that plainly stated.

22 THE COURT: What was the action that was taken that
23 violated the automatic stay?

24 MR. CONNOR: There were three of them, Your Honor, and
25 they're in my motion. But one was on May 18th. That was a

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1 sanctions motion that they were -- where they won. The other
2 was on June the 8th and that was a summary judgment motion
3 which they were granted. And then the other was one May --
4 August 31st. It was a judgment codifying those -- all those
5 things. So that's what's in play, and I am asking the Court to
6 decide whether or not those were violations of the automatic
7 stay. And that's all I'm asking the Court for. I'm not asking
8 you to void anything or vacate anything. I'm just asking for
9 the declaration. I don't want anybody to be hammered here. I
10 just want the rights and duties of all the parties laid out and
11 who had jurisdiction at the time. And that's it for that
12 motion.

13 THE COURT: Let me hear from debtors' counsel.

14 MR. CONNOR: Huh?

15 THE COURT: I'm going to hear from the debtors'
16 counsel now.

17 MS. RICHARDS: Good afternoon, Your Honor. Erica
18 Richards of Morrison & Foerster appearing for the debtors.

19 As Mr. Connor explained, he is seeking a declaratory
20 ruling apparently that the debtors or the Washington court
21 violated the automatic stay and nothing further. Frankly, we
22 don't understand what the purpose of nothing but a declaratory
23 ruling would be. His position appears to be that the debtors
24 should be told that they violated the automatic stay and not
25 permitted to remedy any such violation.

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1 THE COURT: Look, let's cut through it. Did the
2 Washington -- did the court in Washington take any action that
3 violated -- that you would acknowledge violated the automatic
4 stay?

5 MS. RICHARDS: It did, Your Honor. It entered two
6 orders.

7 THE COURT: Which orders?

8 MS. RICHARDS: There was an order on May 18th. The
9 hearing was held before the petition date but the order was
10 actually entered after the petition date.

11 THE COURT: Well did the Court rule at the hearing?

12 MS. RICHARDS: It did, and it asked the debtors to
13 submit a proposed order on presentment.

14 THE COURT: So are you familiar with the law that
15 indicates that the clerk's entry of an order is a ministerial
16 act that doesn't violate the automatic stay? If the Court
17 ruled before the petition was filed but the order wasn't
18 entered until after, that that can be viewed as a ministerial
19 act; it does not violate the automatic stay?

20 MS. RICHARDS: I am, Your Honor. I think it gets a
21 little bit fuzzy because the hearing at which the Court entered
22 that order, I believe Mr. Connor was unable to appear
23 telephonically through no fault of his own. So the Court
24 entered the judgment without his being present. He
25 subsequently filed a motion for rehearing.

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1 THE COURT: But I guess I come back to my question,
2 that's why I asked did the Court -- before the petition was
3 filed did the Court rule that -- it was with respect to Mr.
4 Connor's sanction motion. He sought sanctions and prior to May
5 18th -- am I right about that?

6 MS. RICHARDS: We sought sanctions against Mr. Connor.

7 THE COURT: You sought sanctions against him. Okay.
8 He filed -- this is his action against one of the debtors.

9 MS. RICHARDS: Correct.

10 THE COURT: You sought sanctions against him?

11 MS. RICHARDS: We did.

12 THE COURT: And the Court -- what did the Court do?

13 MS. RICHARDS: The Court --

14 THE COURT: What did the Court do before the petition,
15 the bankruptcy petition?

16 MS. RICHARDS: Before the petition date, the Court
17 held a hearing on our motion for sanctions and on Mr. Connor's
18 motion for authority to place a lis pendens on a certain
19 property.

20 THE COURT: The Court denied the motion.

21 MS. RICHARDS: The Court denied --

22 THE COURT: And placed the lis pendens.

23 MS. RICHARDS: Correct.

24 THE COURT: And what did the Court do with the
25 sanctions?

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1 MS. RICHARDS: Granted our motion for sanctions.

2 THE COURT: What sanctions? Did the Court indicate
3 what sanctions he or she was awarding?

4 MS. RICHARDS: Our request for I think 1,500 dollars
5 and the Court said he wanted that to be based on attorneys'
6 fees. So we submitted a proposed order.

7 THE COURT: But the Court ruled on that before the
8 petition date?

9 MS. RICHARDS: Correct.

10 THE COURT: It's just that the order didn't get
11 entered until after. Did the order deviate from what the Court
12 ruled at the hearing?

13 MS. RICHARDS: I do not believe so, Your Honor.

14 THE COURT: Okay. What's the stay violation with
15 respect to the May 18th order?

16 MS. RICHARDS: I'm sorry?

17 THE COURT: What is the stay violation if -- I mean
18 because my understanding of the law is that the entry of an
19 order -- if the Court rules from the bench and the only thing
20 that happens after is the entry -- after the petition, is the
21 entry of the order, that that's not a stay violation.

22 MS. RICHARDS: Your Honor, we argued in our pleadings
23 that that May 18th order was arguably administrative or
24 ministerial in nature and possibly didn't violate the stay, but
25 out of an abundance of caution --

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1 THE COURT: Okay. Tell me about the June 8th summary
2 judgment?

3 MS. RICHARDS: So, Mr. Connor's lawsuit essentially
4 asserts two claims. The first is that GMAC Mortgage failed to
5 timely record certain documents, and the second is that -- it
6 was essentially a restatement of claims he had initially
7 asserted against all the debtors.

8 THE COURT: And it settled.

9 MS. RICHARDS: That were settled. So our local
10 counsel filed a motion for summary judgment seeking dismissal
11 of that second count.

12 THE COURT: Was that filed before or after the
13 petition date?

14 MS. RICHARDS: The motion was filed before the
15 petition date.

16 THE COURT: Okay. And had there been a hearing on it
17 before?

18 MS. RICHARDS: The hearing was held post-petition.

19 THE COURT: Okay.

20 MS. RICHARDS: On June 8th. The Court found in our
21 favor. We had also asked for sanctions in connection with that
22 motion. The Court also found in our favor for that second
23 sanctions motion at the June 8th hearing.

24 THE COURT: Do you agree that the order -- the June
25 8th order violated the automatic stay?

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1 MS. RICHARDS: We do, Your Honor.

2 THE COURT: Okay. And what are the consequences?

3 Does that make the order void?

4 MS. RICHARDS: That's my understanding that under
5 applicable case law --

6 THE COURT: An order entered in violation of the
7 automatic stay is void.

8 MS. RICHARDS: Correct.

9 THE COURT: Okay. And tell me about the August 31
10 judgment?

11 MS. RICHARDS: An the August 31 judgment was the order
12 entered reflecting the judgment that was made at the June 8th
13 hearing.

14 THE COURT: Okay. And what should the Court do in
15 your view?

16 MS. RICHARDS: "The Court" meaning Your Honor or --

17 THE COURT: Yes, I mean me.

18 MS. RICHARDS: -- the Washington Court?

19 THE COURT: Yes, yes.

20 MS. RICHARDS: Your Honor, we would suggest that you
21 lift the automatic stay in order to allow the debtors to file
22 the motion to vacate any actions that were conducted in
23 violation of the automatic stay. It could be that that is
24 unnecessary if the orders are void on their face, but to clean
25 up the record --

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1 THE COURT: Well, yes --

2 MS. RICHARDS: -- we would suggest that.

3 THE COURT: And so you won on summary judgment; and
4 are you asking the Court to lift the stay to permit the state
5 court to proceed with your summary judgment motion? I just
6 want to understand -- I mean if the judge changes his mind,
7 you're going to be in the soup in the case.

8 MS. RICHARDS: Your Honor -- and I think this goes to
9 Mr. Connor's second requested relief -- we're content to leave
10 the stay in place as against the debtors. Certain of these
11 claims are also asserted against nondebtor entities. We've not
12 contended that the stay stops the litigation as against them.
13 And so to the extent they wanted to refile the motion for
14 sanctions and summary judgment or to the extent the Court
15 wanted to enter an order just as against those nondebtor
16 defendants, we wouldn't oppose it.

17 THE COURT: Tell me this. Which of the orders dealt
18 with the lis pendens? Was it the May 18th order?

19 MS. RICHARDS: The May 18th order.

20 THE COURT: Okay. Anything else you want to add at
21 this point?

22 MS. RICHARDS: Nothing right now.

23 THE COURT: Mr. Connor, do you want to be heard again?

24 MR. CONNOR: Yes, Your Honor. Just very quickly, the
25 lis pendens order -- the lis pendens motion had been withdrawn

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1 prior to the hearing, but he went ahead and ruled on it anyway.

2 The other thing was that at that April 27th hearing,
3 there was a CourtCall problem that wasn't my fault and
4 CourtCall acknowledged it and I put the CourtCall letter in the
5 pleadings for you. And so at the May 18th hearing, I had asked
6 to just -- because of the CourtCall screw-up, I'd asked to have
7 a rehearing of the sanctions motion.

8 At that time on May 18th, the -- excuse me, but on
9 August 27th, the judge had delayed entry of the order on
10 sanctions to June 8th. Now at the May 18th hearing, he
11 authorized the attorney for this -- for GMAC to go ahead and
12 send the order to him for signature. So that was what happened
13 there.

14 And I'm just -- if an order that's taken in violation
15 of the stay is void, then that's what it is. It doesn't
16 require anybody going around and vacating orders. I mean if
17 that's going to be done, that's my prerogative.

18 THE COURT: I don't think so.

19 MR. CONNOR: Well then okay, I -- whose is it?

20 THE COURT: Let me -- Ms. Richards, let me understand.
21 You want to be able to move the trial court to vacate certainly
22 the June 18th summary judgment and the August 31st judgment,
23 correct?

24 MS. RICHARDS: Correct.

25 THE COURT: And are --

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1 MR. CONNOR: That --

2 THE COURT: Just a second, Mr. Connor.

3 MR. CONNOR: Okay.

4 THE COURT: You're also asking to vacate the May 18th
5 order? What are you asking with respect to the May 18th order?
6 I want to understand what you want.

7 MS. RICHARDS: To the extent Your Honor is comfortable
8 that it is a ministerial act that did not violate the automatic
9 stay, that is our position. If you are concerned by Mr.
10 Connor's arguments that he wasn't --

11 THE COURT: Well he'd have to go back -- you know,
12 there's concurrent jurisdiction in state and federal court to
13 determine whether the automatic stay applies. If the automatic
14 stay applies, only the bankruptcy court can vacate it. There
15 is good law that the entry of an order or judgment post-
16 petition based on a ruling pre-petition is a ministerial act as
17 to which the automatic stay doesn't apply. It doesn't violate
18 the automatic stay for a court to enter an order.

19 I don't know exactly what the -- you know, whether the
20 order that got entered on May 18th reflected exactly what the
21 judge ruled or not. I mean are you asking for a do-over?

22 MS. RICHARDS: Not a do-over, Your Honor. We want to
23 take it back to the beginning, avoid any possibility that Mr.
24 Connor could later allege prejudice as a result of the
25 violations. We want to correct anything that might have gone

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1 wrong.

2 THE COURT: Okay. So you're asking -- if I lift the
3 stay, you're going to go back to the state court judge and ask
4 that the May 18th, June 8th and August 31st orders or judgments
5 be vacated.

6 MS. RICHARDS: June 8th was just a hearing, so there
7 were only two orders.

8 THE COURT: I thought you said there was summary
9 judgment --

10 MS. RICHARDS: He made a ruling from the bench, is my
11 understanding and denied --

12 THE COURT: So you want to ask that -- what you're
13 asking for is to be able to go back and ask that the May 18th
14 and August 31st orders or judgment be vacated.

15 MS. RICHARDS: Correct. I think that's the cleanest
16 solution.

17 THE COURT: Mr. Connor do you have an objection to
18 that?

19 MR. CONNOR: They want to ask that they be vacated
20 without prejudice. So that more or less leaves them in play,
21 you know. They can be resurrected any time they want.

22 THE COURT: Absolutely can, Mr. Connor; absolutely
23 can.

24 MR. CONNOR: Huh? I'm sorry. I didn't hear you.

25 THE COURT: I said yes, they absolutely can. Okay.

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1 MR. CONNOR: Yes, I mean if an action taken in
2 violation of the stay is void, then what right does anybody got
3 to go back and resurrect it? I mean I suppose --

4 THE COURT: If they're entitled to summary judgment,
5 Mr. Connor, they can go back at some point -- if the Court
6 lifts the stay, they can go back and ask for summary judgment
7 again. Good luck. And if -- you made a motion to file a lis
8 pendens, the Court denied it.

9 MR. CONNOR: Which is fine.

10 THE COURT: Well, all right. Here's the Court's
11 ruling then. I'm going to ask the debtors' counsel to submit
12 an order to this effect. I'm lifting the automatic stay to
13 permit debtors' counsel to return to the state court to seek to
14 vacate the May 18th and August 31 orders without prejudice to
15 the rights of any parties thereafter. Those don't have to be
16 the exact words but it will take you back to where you were,
17 whether you had to do that with respect to the May 18th order,
18 that's what you asked for, that's what you're going to get.

19 MS. RICHARDS: All right. Thank you, Your Honor.

20 MR. CONNOR: Thank you, Mr. Connor.

21 MR. CONNOR: Thank you, Your Honor.

22 THE COURT: Mr. Marinuzzi, is there anything else? I
23 think that's it.

24 MR. MARINUZZI: Your Honor, we have some uncontested
25 settled matters --

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1 THE COURT: Yes.

2 MR. MARINUZZI: -- where stipulations have been
3 presented.

4 THE COURT: Right. Anybody want to be heard? They're
5 on the agenda. I did review the agenda before to see what they
6 are. These essentially are lift stays to allow the -- to lift
7 the stay so the first mortgagee can foreclose on property and
8 is that -- am I correct?

9 MR. MARINUZZI: That's my understanding, Your Honor.

10 THE COURT: All right.

11 MR. MARINUZZI: Yes.

12 THE COURT: Does anybody want to be heard? All right.
13 Those will be granted.

14 MR. MARINUZZI: Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. MARINUZZI: That's all we have on the agenda.
17 We'll see you in a week.

18 THE COURT: I guess I'm going to see some people at 2
19 o'clock. The court's in recess.

20 MR. MARINUZZI: Thank you.

21 THE COURT: The 2 o'clock hearing is in chambers, not
22 on the record.

23 (Whereupon these proceedings were concluded at 1:09 PM)

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I N D E X

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authorizing debtors to compensate
PricewaterhouseCoopers, LLP for foreclosure
review services in furtherance of the debtors'
compliance obligations under Federal Reserve
Board Consent Order, and reaffirming relief
granted in the GA servicing order, granted.
Debtors' interim application for authorization 88 14
to employ and retain Hudson Cook, LLP as special
counsel to the debtors, nunc pro tunc to May
14, 2012, granted.
Debtors' interim application for an order 88 14
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pro tunc to May 14, 2012, granted.
Debtors' motion approving procedures by which 89 9
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| relief from the automatic stay - denied | | |
| without prejudice | | |
| Debtors Motion to lift automatic stay | 128 | 12 |
| re: Mr. Connors - granted | | |
| All stipulations re lift stay motions | 129 | 13 |
| granted | | |

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: October 11, 2012

October 10, 2012

| | | | | |
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